

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

SOLAS OLED LTD.,) (CIVIL ACTION NO.
) (2:19-CV-152-JRG
PLAINTIFF,) (
) (
VS.) (
) (
SAMSUNG DISPLAY CO., LTD.,) (
SAMSUNG ELECTRONICS CO.,) (MARSHALL, TEXAS
LTD., SAMSUNG ELECTRONICS) (MARCH 1, 2021
AMERICA, INC.,) (2:09 P.M.
) (
DEFENDANTS.) (

TRANSCRIPT OF JURY TRIAL

BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP

UNITED STATES CHIEF DISTRICT JUDGE

APPEARANCES:

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23
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(Proceedings recorded by mechanical stenography, transcript
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01:18:25 1 P R O C E E D I N G S

01:18:25 2 (Jury out.)

01:18:27 3 COURT SECURITY OFFICER: All rise.

01:18:28 4 THE COURT: Be seated, please.

02:09:16 5 Counsel, this morning, I met with you in chambers
02:09:51 6 in advance of jury selection, and we discussed certain
02:09:57 7 overnight disputes regarding intended demonstratives that
02:10:03 8 were going to be used for opening statements or as a part
02:10:07 9 of opening statements this morning.

02:10:08 10 And with regard to at least some of those, I gave
02:10:20 11 you instructions, at least in my mind, to be followed up
02:10:26 12 on.

02:10:26 13 We discussed what was identified as DDX-1.008,
02:10:35 14 DDX-1.009, and DDX-1.011 this morning.

02:10:45 15 I instructed the parties to -- with regard to
02:10:52 16 demonstrative ending in an 8 and a 9, to pull out the
02:10:58 17 figures from the text of the '45 -- '450 patent and either
02:11:05 18 substitute appropriate claim language or tell me they were
02:11:12 19 going to forego those demonstratives altogether. And I
02:11:17 20 directed you all to meet and confer on that.

02:11:19 21 Where are we in that regard? Are these
02:11:21 22 demonstratives still intended to be used, are they in a
02:11:25 23 satisfactory form, or is there any remaining objection?

02:11:28 24 MR. HASLAM: We've modified them according to the
02:11:30 25 Court's guidance. I think we've circulated them to Solas,

02:11:34 1 and I believe they're -- the new demonstratives are agreed
02:11:36 2 to.

02:11:40 3 MR. MIRZAIE: That's correct, Your Honor.

02:11:41 4 THE COURT: All right. With regard to the
02:11:43 5 demonstrative ending in 11, I also directed to change some
02:11:54 6 of that. And I have not seen the end result after we
02:11:56 7 discussed it, particularly the not equal to sign was going
02:11:59 8 to come out, and I wasn't completely clear on how it was
02:12:02 9 going to otherwise be restructured.

02:12:04 10 Have you all met and conferred over DDX-1.011 and
02:12:11 11 is there any --

02:12:12 12 MR. HASLAM: We have deleted the equal sign, and I
02:12:15 13 thought the Court just said two and seven -- I will not say
02:12:18 14 two equals seven. I'm going to be consistent with what the
02:12:21 15 Court's instructions were and how that point fits into the
02:12:27 16 claims that are at issue in the case.

02:12:28 17 THE COURT: Okay. That -- that, Mr. Haslam, is, I
02:12:34 18 think, the critical comment, how this fits into the claims
02:12:37 19 at issue.

02:12:38 20 I have no problem -- and I want to be clear about
02:12:46 21 this as a continuation of our discussion this morning. I
02:12:52 22 have no problem with you telling the jury that your accused
02:12:55 23 products have seven transistors, and the embodiments in the
02:13:03 24 patents have two or three transistors, and then there's the
02:13:10 25 claim language, and the claim language is what the claim

02:13:11 1 language is.

02:13:13 2 But at the end of the day, the message I
02:13:16 3 understand you're going to impart is that the functionality
02:13:21 4 of your seven transistors is different than the
02:13:25 5 functionality of the transistors called for in the claims
02:13:29 6 so that your products do not do what the claims call for.
02:13:33 7 That's got to be your argument.

02:13:34 8 It can't be two is not seven. Their number is
02:13:38 9 different than our number. We don't infringe, end of
02:13:44 10 story. I can't have a bell rung with the jury that can't
02:13:48 11 be unrung like that that I can't correct, and that's why
02:13:52 12 I'm going over this with you one more time.

02:13:54 13 I understand. And it's no secret, I think they
02:13:56 14 can tell, because we have seven, we have configured them in
02:14:04 15 a way that doesn't meet the claim language, and some of
02:14:06 16 them don't do the functions called for in the claim
02:14:09 17 language.

02:14:09 18 THE COURT: And these are comprising claims, so
02:14:11 19 they can have more to them than what's called for.

02:14:17 20 It can't be that all seven transistors have to be
02:14:19 21 reflected in the claims, and it can't be that all seven
02:14:28 22 have to be accounted for in the claims. Really, the
02:14:31 23 numbers don't have anything to do with it. It's the
02:14:33 24 functionality of your accused products compared to the
02:14:35 25 requirements of the claim language, and either they line up

02:14:38 1 and match, or they don't line up and match.

02:14:41 2 MR. HASLAM: They don't line up and match. And
02:14:43 3 the argument --

02:14:43 4 THE COURT: As -- as long as you present it like
02:14:47 5 that, I'm okay with it.

02:14:48 6 MR. HASLAM: But I just want to be very clear,
02:14:50 7 because if the Court doesn't want me to do this, I won't do
02:14:52 8 it.

02:14:53 9 Because we had to use seven transistors to make
02:14:56 10 this work, that's what caused some of the -- the relevant
02:15:00 11 transistors not to be located like the claims require and
02:15:06 12 not to be connected the way the claims require.

02:15:09 13 And so the point I want to make is because we had
02:15:12 14 to use seven transistors, you will not be able to match up
02:15:17 15 what the claim language requires these transistors be
02:15:21 16 located -- the Court's claim construction knows that what
02:15:25 17 the electrode covers was one of the elements of the claim
02:15:29 18 construction. There's no dispute. We disagree that they
02:15:34 19 mapped it onto the right claim -- onto the right
02:15:37 20 transistors, because the claim calls for two, but it calls
02:15:40 21 for two that specifically do something or are specifically
02:15:43 22 located at a place.

02:15:45 23 And the point is going to be that we, because we
02:15:46 24 had seven, we had to move things around and assign
02:15:50 25 different functionalities, and that's what doesn't meet the

02:15:53 1 claim language. Not just so we've got seven, but that the
02:15:56 2 way they're configured and the way they're located and
02:15:59 3 where they're located does not meet what the claim
02:16:02 4 requires.

02:16:03 5 And, ultimately, our case will be, when you look
02:16:05 6 at this claim, it requires X, and what they're pointing to
02:16:09 7 doesn't do X.

02:16:14 8 THE COURT: Well, the numbers of the transistors
02:16:16 9 really are in large part a red herring that have a greater
02:16:22 10 probability of confusing than they do of enlightening the
02:16:26 11 jury.

02:16:27 12 It should be that whether because you used seven,
02:16:30 13 we had to reconfigure or whatever. It should be here's our
02:16:33 14 accused products. This is what it is. This is how it's
02:16:36 15 configured. This is how it works. Here's the claim
02:16:40 16 language that the Plaintiffs say we infringe. It requires
02:16:43 17 A, B, and C. Our accused products don't do A or don't do B
02:16:50 18 or don't do C or don't do A, B, and C.

02:16:53 19 And whether that's because it's two versus seven
02:16:56 20 or some other reason, the key point's got to be a
02:17:01 21 divergence between the requirements of the claim and the
02:17:05 22 functionality of the accused products. And that's why I'm
02:17:07 23 very concerned that if you flash this two and seven number
02:17:10 24 around, we're going to leave an impression with the jury
02:17:13 25 that it's simply a matter of two versus seven, they're not

02:17:18 1 the same, that's the end of the story.

02:17:20 2 And that's not -- that's not appropriate, and I
02:17:25 3 have real concerns at a basic 403 level that the probative
02:17:28 4 value of talking about two versus seven is far outweighed
02:17:34 5 by the potential confusion and prejudice. If that's clear.

02:17:38 6 MR. HASLAM: The jury -- the jury is going to
02:17:40 7 see -- because their expert uses our diagrams, the jury is
02:17:46 8 going to see we have seven transistors. And the story is
02:17:49 9 how did -- how -- I mean, it goes to the story of what our
02:17:53 10 innovation was.

02:17:54 11 And I think it -- to prejudice us and say, well,
02:17:58 12 it's two and we only look at two and ignore the fact that
02:18:01 13 we had to do seven transistors to make this work goes to
02:18:04 14 the value of the patents. But the seven transistors is the
02:18:09 15 causation to make it work, which is why we don't make -- we
02:18:16 16 don't meet the limitations of the claims.

02:18:18 17 So it's -- I'm going to say, unless the Court says
02:18:21 18 I can't say that we have seven transistors, when one of
02:18:25 19 their first experts is going to get up and show them a
02:18:29 20 seven-transistor circuit.

02:18:31 21 THE COURT: What I don't want and what I'm going
02:18:33 22 to preclude you from arguing is that seven versus two or
02:18:36 23 two versus seven is some kind of shortcut for the
02:18:40 24 technicalities of infringement and whether they do or don't
02:18:43 25 infringe reflect each and every element of the asserted

02:18:45 1 claims.

02:18:45 2 MR. HASLAM: I don't intend to.

02:18:46 3 THE COURT: Okay. I just wanted to be crystal
02:18:48 4 clear.

02:18:48 5 MR. HASLAM: Okay.

02:18:49 6 THE COURT: Because this is -- this is something I
02:18:51 7 have a concern could be extremely confusing at the very
02:18:55 8 front end of the trial.

02:18:56 9 MR. HASLAM: And I'm going to ask for the Court's
02:18:58 10 guidance. I mean, I would assume I could use the slide
02:19:02 11 that the Court has concerns about. But given what the
02:19:07 12 Court has said, I do not want to use that slide if the
02:19:10 13 Court at this point thinks that I'm going over the line.

02:19:13 14 THE COURT: I think it'd be better if you forego
02:19:15 15 1.011, all right?

02:19:18 16 MR. HASLAM: Will do.

02:19:19 17 THE COURT: Okay. Anything else we need to take
02:19:21 18 up before I bring in the jury?

02:19:24 19 I understand Mr. Ward and Mr. Fenster are going to
02:19:28 20 split their time.

02:19:29 21 MR. WARD: Yes, Your Honor.

02:19:30 22 THE COURT: Mr. Ward, you're welcome to sit in one
02:19:32 23 of the chairs against the wall behind the podium. You're
02:19:35 24 welcome to sit where you are and go around. I do not want
02:19:38 25 Plaintiffs walking between the Defense table and the jury

02:19:38 1 during the trial.

02:19:38 2 MR. WARD: I'll just start out over there.

02:19:38 3 THE COURT: Are there other housekeeping matters
02:19:45 4 we need to talk about?

02:19:45 5 MR. DANIEL CHO: Yes, Your Honor. Daniel Cho on
02:19:47 6 behalf of Defendants.

02:19:47 7 We'd like to preserve a record of our objection to
02:19:50 8 a document that was the subject of our motion to strike,
02:19:55 9 Docket No. 318 denied as Docket No. 329, which we
02:20:02 10 understand is a Plaintiff's trial Exhibit No. 745. And
02:20:04 11 I've conferred with Mr. Mirzaie, lead counsel for Plaintiff
02:20:09 12 Solas. We'd just like to preserve our objections for the
02:20:13 13 record to that PTX-745 for the reasons stated in our
02:20:15 14 briefings.

02:20:16 15 THE COURT: Ordinarily, counsel, the last thing I
02:20:18 16 want to do is stand between a lawyer of preserving
02:20:22 17 something they think is important in the record, but it is
02:20:24 18 not lost on the Court that exhibit disputes were taken up
02:20:27 19 in September of last year and this is March of 2021, and
02:20:31 20 I've heard nothing from anybody from September to March.

02:20:34 21 So do you have an explanation as to why this
02:20:36 22 wasn't done as a part of the pre-trial conference --

02:20:38 23 MR. DANIEL CHO: Yes.

02:20:39 24 THE COURT: -- in the fall of last year?

02:20:41 25 MR. DANIEL CHO: Yes, Your Honor. This document,

02:20:42 1 if you may recall, was disclosed to us after the September
02:20:46 2 pre-trial conferences. It was produced in December and was
02:20:49 3 the subject of our motion to strike which was filed --

02:20:52 4 THE COURT: Is this the LG license?

02:20:54 5 MR. DANIEL CHO: Yes, Your Honor.

02:20:55 6 THE COURT: Okay. Is there objection to
02:20:56 7 preservation of this matter?

02:20:58 8 MR. FENSTER: No, Your Honor.

02:20:59 9 THE COURT: Okay.

02:21:00 10 MR. DANIEL CHO: Thank you, Your Honor.

02:21:01 11 THE COURT: All right. So noted in the record.
02:21:03 12 Anything further?

02:21:07 13 MR. FENSTER: Not from Plaintiff, Your Honor.

02:21:08 14 THE COURT: Okay. Let's bring in the jury then.
02:21:39 15 (Jury in.)

02:21:39 16 THE COURT: Please be seated, ladies and
02:21:50 17 gentlemen.

02:21:50 18 Welcome back from lunch, members of the jury.

02:21:58 19 I have some preliminary instructions that I now
02:22:05 20 need to give you on the record before we start with opening
02:22:08 21 statements from the lawyers and then get on to the
02:22:11 22 evidence.

02:22:11 23 You've now been sworn as the jurors in this case,
02:22:16 24 and, as such, and as I indicated to you earlier, you are
02:22:19 25 the sole judges of the facts. And, as such, you will

02:22:23 1 determine all the facts in this case.

02:22:25 2 As the Judge, I will give you instructions on the
02:22:30 3 law, I will address and decide any questions of law that
02:22:34 4 arise during the course of the trial, I'll handle all
02:22:38 5 matters related to evidence and procedure, and I'm
02:22:40 6 responsible for maintaining an efficient flow of the
02:22:43 7 evidence and maintaining the decorum of the court.

02:22:47 8 At the end of the evidence, I'll give you detailed
02:22:50 9 instructions about the law to apply in deciding this case,
02:22:54 10 and I'll give you a list of questions that you are then to
02:22:57 11 answer.

02:22:59 12 This list of questions is called the verdict form.
02:23:02 13 And your answers to those questions will need to be
02:23:07 14 unanimous. And your answers to those questions will
02:23:11 15 constitute the jury's verdict in this case.

02:23:13 16 Now, I want to tell you briefly what this case is
02:23:19 17 about.

02:23:19 18 As you know, this involves a dispute regarding
02:23:21 19 three certain United States patents. I know that each of
02:23:26 20 you saw the patent video film this morning, but I need to
02:23:29 21 give you some additional instructions now and on the record
02:23:32 22 about a patent and how one is obtained.

02:23:34 23 Patents are either granted or denied by the United
02:23:39 24 States Patent and Trademark Office, sometimes simply
02:23:43 25 called, for short, the PTO.

02:23:45 1 A valid United States patent gives the holder of
02:23:49 2 the patent the right for up to 20 years from the date the
02:23:52 3 patent application is filed within the United States --
02:23:58 4 excuse me, to prevent others from making, using, or
02:24:02 5 offering to sell or selling the patented invention within
02:24:04 6 the United States or from importing it into the United
02:24:09 7 States without the patentholder's permission.

02:24:11 8 A patent is a form of property called intellectual
02:24:14 9 property. And like all forms of property, a patent can be
02:24:18 10 bought or sold.

02:24:19 11 A violation of the patentholder's rights is called
02:24:24 12 infringement. A patentholder may try to enforce a patent
02:24:28 13 against persons it believes to be infringers by filing a
02:24:32 14 lawsuit in a United States District Court. And that's what
02:24:36 15 we have before us in this case.

02:24:37 16 The process of obtaining a patent is called patent
02:24:41 17 prosecution. To obtain a patent, one must first file an
02:24:47 18 application with the PTO, the United States Patent and
02:24:49 19 Trademark Office.

02:24:50 20 The PTO is an agency of the United States
02:24:56 21 Government, and it employs trained examiners who review
02:24:59 22 patents and applications for patents.

02:25:02 23 The application submitted to the PTO includes
02:25:06 24 within it what is called a specification. The
02:25:09 25 specification contains a written description of the claimed

02:25:13 1 invention telling what the invention is, how it works, how
02:25:17 2 to make it, and how to use it.

02:25:20 3 The specification concludes, or ends, with one or
02:25:23 4 more numbered sentences. These numbered sentences are the
02:25:28 5 patent claims.

02:25:30 6 When a patent is granted by the Patent and
02:25:34 7 Trademark Office, the claims, ladies and gentlemen, define
02:25:38 8 the boundaries of the patent's protection and give notice
02:25:42 9 to the public of those boundaries.

02:25:44 10 Patent claims may exist in two forms, referred to
02:25:48 11 as independent claims and dependent claims.

02:25:50 12 An independent claim does not refer to any other
02:25:56 13 claim in the patent. It is independent. It's not
02:26:00 14 necessary to look at any other claim to determine what an
02:26:04 15 independent claim covers.

02:26:06 16 However, a dependent claim refers to at least one
02:26:10 17 other claim in the patent. A dependent claim includes each
02:26:16 18 of the limitations of that other claim or claims to which
02:26:20 19 it refers, or as we sometimes say, from which it depends,
02:26:26 20 as well as the additional limitations recited within the
02:26:33 21 dependent claim itself.

02:26:35 22 Therefore, to determine what a dependent patent
02:26:38 23 claim covers, it's necessary to look at both the dependent
02:26:41 24 claim itself and the independent claim or claims to which
02:26:46 25 it refers or from which it depends.

02:26:49 1 The claims of the patents-in-suit in this case use
02:26:53 2 the word "comprising." Comprising means including or
02:26:58 3 containing.

02:27:01 4 A claim that includes the word "comprising,"
02:27:06 5 ladies and gentlemen, is not limited to the methods or
02:27:09 6 devices having only the elements that are recited in the
02:27:12 7 claim but also covers methods or devices that add
02:27:16 8 additional elements.

02:27:17 9 Take, for example, a claim that covers a table.
02:27:23 10 If a claim recites a table comprising a tabletop, legs, and
02:27:29 11 glue, the claim will cover any table that contains these
02:27:34 12 three structures, even if the table also contains other
02:27:38 13 structures, such as a leaf to expand the size of the
02:27:43 14 tabletop or wheels to go on the ends of the legs.

02:27:45 15 Now, that's a simple example using the word
02:27:49 16 "comprising" and what it means. In other words, it can
02:27:52 17 have other features in addition to those that are covered
02:27:55 18 by the patent.

02:27:56 19 Now, after the applicant files an application with
02:28:01 20 the PTO, the PTO assigns an examiner, and the examiner
02:28:06 21 reviews the application to determine whether or not the
02:28:10 22 claims are patentable, that is to say, appropriate for
02:28:15 23 patent protection, and whether or not the specification
02:28:19 24 adequately describes the invention claimed.

02:28:22 25 In examining a patent application, the examiner

02:28:27 1 reviews certain information about the state of the
02:28:30 2 technology at the time the application was filed. The PTO
02:28:35 3 searches for and reviews this type of information that was
02:28:39 4 publicly available or that was submitted by the applicant.
02:28:43 5 And this type of information is called prior art.

02:28:47 6 The examiner reviews this prior art to determine
02:28:51 7 whether or not the invention is truly an advance over the
02:28:55 8 state of the art at the time.

02:28:57 9 Prior art is defined by law, and I'll give you at
02:29:01 10 a later time specific instructions as to what constitutes
02:29:04 11 prior art.

02:29:07 12 However, in general, ladies and gentlemen, prior
02:29:09 13 art includes information that demonstrates the state of the
02:29:16 14 technology that existed before the claimed invention was
02:29:18 15 made or before the application for a patent was filed with
02:29:22 16 the PTO.

02:29:22 17 A patent contains a list of certain prior art that
02:29:28 18 the examiner has considered. The items on this list are
02:29:32 19 called the cited references.

02:29:35 20 Now, after the prior art search and the
02:29:38 21 examination of the application by the examiner, the
02:29:42 22 examiner informs the applicant in writing of what the
02:29:45 23 examiner has found and whether the examiner considers any
02:29:51 24 claim to be patentable, in which case it would be allowed.
02:29:57 25 This writing from the examiner to the applicant is called

02:29:59 1 an Office Action.

02:30:00 2 If the examiner rejects the claims, the applicant
02:30:04 3 has an opportunity to respond to the examiner to try to
02:30:08 4 persuade the examiner to allow the claims. The applicant
02:30:12 5 also has a chance to change or amend the claims or to
02:30:17 6 submit altogether new claims.

02:30:19 7 Now, these papers generated during these
02:30:23 8 communications back and forth between the examiner and the
02:30:25 9 applicant are called the prosecution history.

02:30:30 10 Now, this process may go on back and forth between
02:30:34 11 the applicant and the examiner for some time until at some
02:30:38 12 point the examiner is satisfied that the application meets
02:30:41 13 the requirements for a patent. And in that case, the
02:30:46 14 application issues as a U.S. patent.

02:30:49 15 Or in the alternative, if the examiner ultimately
02:30:53 16 concludes that the application should be rejected, then no
02:30:56 17 patent is issued.

02:30:58 18 Sometimes patents are issued after appeals within
02:31:02 19 the PTO or to a court. The fact that the PTO grants a
02:31:07 20 patent does not necessarily mean that any invention claimed
02:31:11 21 in the patent, in fact, deserves the protection of a
02:31:15 22 patent.

02:31:15 23 While each United States patent that is issued by
02:31:19 24 the PTO is presumed to be valid under the law, a person
02:31:24 25 accused of infringement has the right to argue in federal

02:31:29 1 court that a claimed invention in a patent is invalid.

02:31:35 2 It's your job, ladies and gentlemen, as the jury,
02:31:38 3 to consider whether the evidence presented by the parties
02:31:42 4 and to determine independently and for yourselves whether
02:31:46 5 or not the Defendant has proven that a patent is invalid.

02:31:51 6 Now, to help you follow the evidence, I'll give
02:31:54 7 you a brief summary of the positions of the two parties.

02:31:56 8 Of course, there are more than one Defendant.
02:32:00 9 There are three Defendants, as I called out earlier. We
02:32:03 10 will call them collectively Samsung, even though there are
02:32:06 11 three of them. And when I say two parties, I mean Samsung
02:32:11 12 as the Defendant and Solas as the Plaintiff.

02:32:12 13 Now, as you know, the party that brings a lawsuit
02:32:17 14 is called the Plaintiff. In this case, the Plaintiff is
02:32:20 15 Solas OLED Limited, which is referred to as either Solas or
02:32:25 16 simply the Plaintiff.

02:32:25 17 And as you know, the party against whom a lawsuit
02:32:29 18 is brought is called the Defendant. And in this case, we
02:32:32 19 have three Defendants. They are Samsung Display Company,
02:32:38 20 Limited; Samsung Electronics Company, Limited; and Samsung
02:32:43 21 Electronics America, Inc. And these three Defendants will
02:32:48 22 either be called collectively the Defendants over the
02:32:52 23 course of the trial, or they may also be referred to
02:32:55 24 collectively simply by being called Samsung.

02:32:58 25 Now, as I told you during jury selection, this is

02:33:00 1 a case of alleged patent infringement. And as I mentioned,
02:33:07 2 there are three separate United States patents that have
02:33:09 3 been asserted in this case.

02:33:10 4 The first asserted patent in this case is United
02:33:14 5 States Patent No. 6,072,450. And as you may have been
02:33:20 6 told, patents are commonly referred to by the last three
02:33:23 7 digits of their patent number.

02:33:26 8 So in this case, Patent No. 6,072,450 will
02:33:32 9 probably in all likelihood be called throughout the trial
02:33:36 10 the '450 patent. You may hear it called the '450 patent.
02:33:39 11 But the last three digits will be the identifying name for
02:33:43 12 that particular patent.

02:33:44 13 The second patent at issue in this case is United
02:33:49 14 States Patent No. 7,446,338, which you'll hear referred to
02:33:56 15 in the same way as the '338 or the '338 patent.

02:33:59 16 And the third and final United States patent at
02:34:03 17 issue and which has been asserted in this case is United
02:34:06 18 States Patent No. 9,256,311, which you'll hear referred to
02:34:12 19 throughout the case as the '311 or the '311 patent.

02:34:15 20 Now, these patents can be referred to and will be
02:34:20 21 referred to at various times over the course of the trial
02:34:22 22 collectively and together as the patents-in-suit. They're
02:34:28 23 sometimes also called the asserted patents. And these
02:34:33 24 patents generally relate to mobile phone screens.

02:34:38 25 Now, the Plaintiff in this case, Solas, contends

02:34:41 1 that the Defendants, Samsung, are willfully infringing
02:34:46 2 certain claims of one of the three patents-in-suit by
02:34:50 3 importing, making, or selling products that include their
02:34:54 4 patented technology.

02:34:55 5 Solas also contends that Samsung has induced or
02:35:01 6 contributed to or continue -- and continues to induce or
02:35:06 7 contribute to infringement by others.

02:35:07 8 Solas also contends that it's entitled to money
02:35:11 9 damages as a result of such infringement.

02:35:15 10 Now, the Defendants, Samsung, deny that they are
02:35:22 11 infringing any of the claims of the patents-in-suit
02:35:24 12 asserted by the Plaintiffs, and they contend that the
02:35:27 13 asserted claims of two of the three patents-in-suit are
02:35:30 14 invalid as either being anticipated or obvious in the light
02:35:34 15 of prior art.

02:35:35 16 Samsung also contends that the asserted claims of
02:35:41 17 one of the patents-in-suit is invalid because the patent
02:35:49 18 specification does not contain a sufficient written
02:35:52 19 description of the invention and does not enable a person
02:35:56 20 skilled in the art to make and use the invention. That is
02:36:01 21 the '450 or the '450 patent.

02:36:03 22 Finally, the '338 patent is not alleged to be
02:36:08 23 invalid by the Defendant, Samsung, for any reason.

02:36:12 24 Now, I know there are new words, and I know there
02:36:15 25 are a lot of new concepts that have been thrown at you

02:36:18 1 today, ladies and gentlemen. I'm going to define a lot of
02:36:21 2 these words and concepts for you as we go through my
02:36:25 3 instructions. The attorneys are going to discuss many of
02:36:28 4 these in their opening statements. The witnesses are going
02:36:32 5 to help you through their testimony to understand these
02:36:35 6 terms and concepts.

02:36:36 7 So, please, ladies and gentlemen, do not feel
02:36:39 8 overwhelmed at this point. I promise you, it will all come
02:36:43 9 together as we go through the trial.

02:36:45 10 Now, one of your jobs in this case is to decide
02:36:50 11 whether or not the asserted claims of the three asserted
02:36:53 12 patents have been infringed and whether they are invalid.

02:36:59 13 If you decide that any claim of the
02:37:01 14 patents-in-suit has been infringed by the Defendants and is
02:37:05 15 not invalid, then you'll need to decide whether or not the
02:37:10 16 infringement has been willful.

02:37:13 17 You will also then need to decide what amount of
02:37:16 18 money damages should be awarded to the Plaintiff as
02:37:20 19 compensation for that infringement.

02:37:23 20 Now, my job in this case is to tell you what the
02:37:27 21 law is, to handle matters and rulings on evidence and
02:37:30 22 procedure, and to oversee the conduct of the trial as
02:37:33 23 efficiently as possible, and to maintain the proper decorum
02:37:38 24 of this court.

02:37:40 25 In determining the law, it's specifically my job

02:37:42 1 to determine the meaning of any of the claim language from
02:37:46 2 the asserted claims of the patents-in-suit that needs
02:37:49 3 interpretation.

02:37:51 4 I have already determined the meanings of the
02:37:55 5 claims of the patents-in-suit, and you must accept the
02:37:58 6 meanings or constructions that I give you and use those
02:38:02 7 meanings when you decide whether any particular claim has
02:38:05 8 or has not been infringed and whether or not any particular
02:38:09 9 claim is invalid.

02:38:12 10 And you're going to be given a document, ladies
02:38:14 11 and gentlemen, in a few moments that will reflect these
02:38:18 12 meanings or constructions that the Court has already
02:38:20 13 reached.

02:38:20 14 Now, for any of the claim language or claim terms
02:38:23 15 that I have not provided you with a specific definition or
02:38:26 16 construction, you should apply the plain and ordinary
02:38:29 17 meaning. But if I've provided you with a definition,
02:38:35 18 sometimes called a construction, you are to apply my
02:38:38 19 definition to those terms throughout the case.

02:38:42 20 However, my interpretation of the language of the
02:38:46 21 claims should not be taken as an indication by you that I
02:38:50 22 have a personal opinion or any opinion at all regarding the
02:38:54 23 issues of infringement and validity. Those issues, ladies
02:38:58 24 and gentlemen, are yours as the jury to decide, and they're
02:39:01 25 yours to decide alone.

02:39:02 1 Now, I'll provide you with more detailed
02:39:06 2 instructions on the meanings of the claims before you
02:39:08 3 retire to deliberate and reach your verdict.

02:39:11 4 In deciding the issues that are before you, you
02:39:15 5 will be asked to consider specific legal rules, and I'll
02:39:18 6 give you an overview of those rules now, and then at the
02:39:22 7 conclusion of the case, I'll give you more detailed
02:39:25 8 instructions.

02:39:25 9 The first issue you're asked to decide is whether
02:39:29 10 the Defendants, Samsung, have infringed any of the asserted
02:39:34 11 claims of the patents-in-suit.

02:39:37 12 Infringement, ladies and gentlemen, is assessed on
02:39:39 13 a claim-by-claim basis. And Solas, the Plaintiff, must
02:39:45 14 show by a preponderance of the evidence that a claim has
02:39:49 15 been infringed. Therefore, there may be infringement as to
02:39:53 16 one claim but no infringement as to another claim.

02:39:57 17 There are also a few different ways that a patent
02:40:03 18 can be infringed, and I'll explain the requirements for
02:40:06 19 each of these types of infringement to you in detail at the
02:40:09 20 conclusion of the case.

02:40:11 21 But, in general, a Defendant may infringe an
02:40:14 22 asserted patent by making, using, selling, or offering for
02:40:17 23 sale in the United States or importing into the United
02:40:22 24 States a product meeting all of the requirements of a claim
02:40:25 25 of the asserted patent.

02:40:27 1 As I say, I'll provide you with more detailed
02:40:29 2 instructions on the requirements for infringement at the
02:40:36 3 conclusion of the case.

02:40:37 4 Now, the second issue that you'll be asked to
02:40:40 5 decide is whether any of the asserted patents are invalid.

02:40:42 6 Invalidity, ladies and gentlemen, is a defense to
02:40:46 7 infringement. Therefore, even though the United States
02:40:51 8 Patent and Trademark Office has allowed the asserted claims
02:40:55 9 and issued a patent and even though an issued patent is
02:41:00 10 presumed under the law to be valid, you, the jury, must
02:41:04 11 decide whether those claims are invalid after hearing the
02:41:08 12 evidence presented in this case.

02:41:10 13 Now, you may find that a patent claim is invalid
02:41:15 14 for a number of reasons, including because it claims
02:41:19 15 subject matter that is not new or because it is obvious.

02:41:23 16 For a patent claim to be invalid because it is not
02:41:30 17 new, the Defendant must show you by clear and convincing
02:41:33 18 evidence that all of the elements of the claim are
02:41:36 19 sufficiently described in a single previously printed
02:41:42 20 publication or patent.

02:41:43 21 If a claim, ladies and gentlemen, is not new, it
02:41:46 22 is said to be anticipated.

02:41:49 23 Now, another way that a claim can be found to be
02:41:52 24 invalid is that it may have been obvious. Even though a
02:41:57 25 claim is not anticipated because every element of the claim

02:42:01 1 is not shown or sufficiently described in a single piece of
02:42:05 2 prior art, the claim may still be invalid if it would have
02:42:10 3 been obvious to a person of ordinary skill in the field of
02:42:15 4 technology of the patent at the relevant time.

02:42:18 5 Now, you will need to consider a number of
02:42:21 6 questions in deciding whether the inventions claimed in the
02:42:25 7 asserted patents is obvious. And I'll provide you with
02:42:28 8 more detailed instructions on those questions at the
02:42:31 9 conclusion of the trial.

02:42:34 10 Another way that a claim can be found to be
02:42:37 11 invalid is there may have been a lack of an adequate
02:42:40 12 written description.

02:42:42 13 A patent may be -- excuse me. A patent may be
02:42:45 14 invalid if its specification does not describe the claimed
02:42:49 15 invention in sufficient detail so that one skilled in the
02:42:54 16 art can reasonably conclude that the inventor actually had
02:42:57 17 possession of the invention that they are claiming.

02:43:01 18 If you decide that any claim of the
02:43:03 19 patents-in-suit has been infringed and that claim is not
02:43:08 20 invalid, then you'll need to decide whether the
02:43:13 21 infringement by the Defendants has been willful.

02:43:17 22 You will also need to decide what amount of money
02:43:21 23 damages should be awarded to the Plaintiff, in this case
02:43:24 24 Solas, to compensate it for that infringement.

02:43:28 25 A damage award, ladies and gentlemen, must be

02:43:30 1 adequate to compensate the patentholder for the
02:43:34 2 infringement, and in no event may a damage award be less
02:43:40 3 than what the patentholder would have received if it had
02:43:42 4 been paid a reasonable royalty for the use of its patent.

02:43:47 5 However, the damages that you award, if any, are
02:43:53 6 meant to compensate the patentholder and they're not meant
02:43:57 7 to punish the Defendant.

02:43:58 8 You may not include in any damages award an
02:44:01 9 additional amount as a fine or penalty above what is
02:44:04 10 necessary to fully compensate the patentholder for any
02:44:07 11 infringement that you have found.

02:44:13 12 Moreover, damages cannot be speculative, and the
02:44:15 13 Plaintiff, Solas, must prove the amount of its damages for
02:44:19 14 the alleged infringement by a preponderance of the
02:44:22 15 evidence.

02:44:22 16 I'll give you more instructions on the calculation
02:44:26 17 of damages for the Defendants' alleged infringement of the
02:44:32 18 patents-in-suit at the conclusion of the trial, including
02:44:34 19 by instructing you on the specific instructions regarding
02:44:37 20 the calculation of a reasonable royalty.

02:44:39 21 However, ladies and gentlemen, the fact that I am
02:44:43 22 instructing you about damages does not mean that Solas is
02:44:48 23 or is not entitled to recover damages.

02:44:52 24 Now, over the course of the trial, you're going to
02:44:56 25 be hearing from a number of different witnesses, and I want

02:45:00 1 you to keep an open mind while you're listening to the
02:45:03 2 evidence and not decide any of the facts until you have
02:45:07 3 heard all of the evidence.

02:45:08 4 And this is important, ladies and gentlemen.
02:45:13 5 While the witnesses are testifying, remember, you, the
02:45:17 6 jury, will have to decide the degree of credibility and
02:45:20 7 believability to allocate to each of the witnesses and the
02:45:26 8 evidence that they give. So while the witnesses are
02:45:29 9 testifying, you should be asking yourselves things like
02:45:31 10 this:

02:45:32 11 Does the witness impress you as being truthful?
02:45:36 12 Did he or she have a reason not to tell the truth? Does he
02:45:39 13 or she have any personal interest in the outcome of the
02:45:42 14 case? Does the witness seem to have a good memory? Did he
02:45:47 15 or she have the opportunity and ability to observe
02:45:50 16 accurately the things that they testified about? Did the
02:45:54 17 witness appear to understand the questions clearly and
02:45:57 18 answer them directly? And, of course, does the witness's
02:46:01 19 testimony differ from the testimony of other witnesses?
02:46:06 20 And if it does, how does it differ?

02:46:09 21 These are some of the kinds of things that you
02:46:11 22 should be thinking about while you're listening to each
02:46:14 23 witness during the trial of this case and while each
02:46:17 24 witness testifies from the witness stand.

02:46:18 25 Also, ladies and gentlemen, I want to talk to you

02:46:23 1 briefly about expert witnesses.

02:46:25 2 When knowledge of a technical subject that may be
02:46:30 3 helpful to you, the jury, a person who has special training
02:46:34 4 and experience in that particular field, we call them an
02:46:39 5 expert witness, that witness is permitted to testify to you
02:46:42 6 about his or her opinions on technical matters.

02:46:48 7 However, you're not required to accept an expert's
02:46:52 8 or any other witness's opinions at all. It's up to you to
02:46:55 9 decide who to believe and who not to believe and whether an
02:47:02 10 expert witness or any witness, for that matter, is correct
02:47:04 11 or incorrect about what they tell you.

02:47:06 12 Now, I anticipate that there will be expert
02:47:09 13 witnesses testifying in support of both the Plaintiff and
02:47:12 14 the Defendants, but it will be up to you, when an expert
02:47:17 15 witness testifies, to listen to their qualifications, and
02:47:20 16 when they give you an opinion and explain the basis for
02:47:24 17 that opinion, you will have to evaluate what they say,
02:47:28 18 whether you believe what they say, and to what degree, if
02:47:32 19 any, that you want to give that opinion weight.

02:47:35 20 Remember, ladies and gentlemen, judging and
02:47:38 21 evaluating the credibility and believability of each and
02:47:42 22 every witness is an important part of your job as jurors.

02:47:47 23 Now, during the course of the trial, it's possible
02:47:52 24 that there will be testimony from one or more witnesses
02:47:55 25 that are going to be presented to you through what's called

02:47:57 1 a deposition.

02:47:59 2 In trials like this, it's difficult and sometimes
02:48:03 3 almost impossible to get every witness physically present
02:48:07 4 in court to testify at the same time.

02:48:10 5 Therefore, before the trial begins, the lawyers
02:48:14 6 for both sides take the depositions of the witnesses. In a
02:48:18 7 deposition, the witness is present and sworn and placed
02:48:23 8 under oath, a court reporter is present, and the lawyers
02:48:26 9 for both Plaintiff and Defendants are present.

02:48:30 10 The witness is asked questions and gives answers
02:48:33 11 to those questions under oath, and those answers to the
02:48:37 12 questions and the questions asked are taken down and
02:48:41 13 transcribed and recorded.

02:48:43 14 Often in these depositions, in addition to taking
02:48:45 15 down the written version of the questions and answers, the
02:48:49 16 actual deposition is recorded by video so that you can see
02:48:53 17 the witness, hear the question asked, and hear the answer
02:48:57 18 given.

02:48:58 19 These depositions generally, ladies and gentlemen,
02:49:05 20 go on for several hours at a time. If a witness is going
02:49:09 21 to be presented at trial through a deposition and they
02:49:12 22 cannot appear in person, then portions of that deposition
02:49:17 23 will be selected by the parties to be played to the jury as
02:49:20 24 that witness's testimony.

02:49:24 25 And you will not have to listen to a seven-hour

02:49:27 1 deposition. You may hear a few minutes or some portion of
02:49:30 2 it that has been selected by Plaintiff and Defendant to be
02:49:35 3 presented to you from that witness.

02:49:36 4 So when you see deposition testimony that will be
02:49:40 5 played to you, if it looks like there are places where it
02:49:44 6 is spliced together or joined together, that's so the part
02:49:49 7 that's not important for you to hear is cut out, and you
02:49:52 8 don't have to listen to seven hours straight to get 20 or
02:49:55 9 30 minutes' worth of important testimony before you.

02:49:58 10 So if you see areas in deposition witnesses that
02:50:00 11 look like they're spliced or there's a transition, they
02:50:04 12 are. But that's to save you a lot of time and effort. The
02:50:08 13 important part, the part that the Plaintiff and the
02:50:09 14 Defendants believe that you should hear as evidence in this
02:50:11 15 case, will be played to you as that deposition testimony.

02:50:15 16 And I want to remind you, ladies and gentlemen,
02:50:20 17 that deposition testimony is entitled to the same
02:50:23 18 consideration and, to the extent possible, is to be
02:50:27 19 evaluated by you, the jury, in the same way as if the
02:50:30 20 witness had appeared in Court and testified live from the
02:50:33 21 witness stand.

02:50:34 22 Now, during the course of the trial, it's possible
02:50:44 23 that the lawyers will periodically make certain objections,
02:50:46 24 and when they do, I will give rulings on those objections.

02:50:51 25 It's the duty of an attorney to object on each

02:50:54 1 side of the case if the other side purports to offer
02:50:57 2 testimony or other evidence that the objecting attorney
02:51:00 3 believes is not proper under the rules of the Court or the
02:51:05 4 orders of the Court.

02:51:06 5 Now, upon allowing the testimony or other evidence
02:51:09 6 to be introduced over an objection of an attorney, the
02:51:13 7 Court does not, unless expressly stated, indicate an
02:51:16 8 opinion about the weight or effect of that testimony. As
02:51:21 9 I've said before, you are the sole judges of the
02:51:24 10 credibility and believability of all the witnesses and the
02:51:27 11 weight and effect, if any, to give to the testimony that's
02:51:30 12 presented through the course of this trial.

02:51:32 13 Now, I want to compliment all the parties in this
02:51:37 14 case and their counsel in this case because prior to this
02:51:41 15 trial today, both sides have worked with the Court very
02:51:44 16 diligently to go through the exhibits that will be
02:51:47 17 presented in this trial.

02:51:49 18 And any exhibits proposed by either party that the
02:51:52 19 other side has objected to, the Court has considered those
02:51:56 20 objections in earlier pre-trial hearings before you were
02:52:00 21 selected and seated.

02:52:04 22 And I've heard all the arguments, I've seen all
02:52:07 23 the documents, and I've already decided what is admissible.
02:52:09 24 And in those cases, the objections have been overruled and
02:52:13 25 the document has been considered to be an exhibit.

02:52:16 1 Or in those cases where I think the document is
02:52:18 2 not admissible under the Rules of Evidence, then I have
02:52:22 3 sustained the objection, and the exhibit is not a part of
02:52:25 4 this case -- the document is not a part of this case, and
02:52:28 5 you'll never see it.

02:52:30 6 That means, ladies and gentlemen, that from that
02:52:33 7 list of pre-admitted exhibits that the Court's already
02:52:36 8 acted on and approved as to its admissibility, you don't
02:52:40 9 have to sit through all those arguments, and you don't
02:52:43 10 hear -- have to hear the back-and-forth between the lawyers
02:52:45 11 about whether it is or isn't admissible under the Rules of
02:52:50 12 Evidence. I've already done that. And with their effort
02:52:53 13 and my effort together, we have saved you hours and hours
02:52:55 14 of time listening to all of that.

02:52:57 15 We are now in a position where all those documents
02:53:01 16 have been dealt with, and either side can show you any item
02:53:04 17 from the list of exhibits that I've already approved and
02:53:07 18 simply show it to you and use it over the course of the
02:53:10 19 trial without a formal offer, without a predicate, without
02:53:13 20 an argument, without a dispute.

02:53:16 21 So I don't know if you understand it, but there
02:53:19 22 are many hours that we've already expended that have saved
02:53:23 23 you from sitting there and listening to that. The exhibits
02:53:26 24 that are shown to you have already been pre-admitted by the
02:53:29 25 Court through these pre-trial procedures, which means I've

02:53:32 1 already made a decision about the admissibility of those
02:53:35 2 exhibits, and a lot of time has been saved on your part
02:53:38 3 because of that work that the parties and their counsel
02:53:41 4 have done with the Court in advance.

02:53:43 5 So if the parties show you an exhibit over the
02:53:45 6 course of the trial, if either side does, it means that
02:53:48 7 I've already determined it's admissible, and they can
02:53:51 8 simply show it to you and ask such questions as they choose
02:53:56 9 and put it in a proper context with any witness.

02:53:58 10 I just want you to understand there's been a lot
02:54:02 11 of work to streamline that before today. And I think it
02:54:06 12 will become apparent to you as we go forward with the
02:54:10 13 trial. However, that being case -- that being the case,
02:54:12 14 it's still possible that objections will arise during the
02:54:15 15 course of the trial.

02:54:19 16 If I should sustain an objection to a question
02:54:21 17 addressed to a witness, then you must disregard the
02:54:24 18 question entirely, and you may draw no inference from its
02:54:29 19 wording or speculate in your own mind about what the
02:54:31 20 witness would have said if I had permitted them to answer
02:54:35 21 the question.

02:54:39 22 On the other hand, ladies and gentlemen, if I
02:54:41 23 overrule an objection to a question addressed to a witness,
02:54:43 24 then the witness will answer the question, and you should
02:54:46 25 consider the answer and the question just as if no

02:54:49 1 objection had been made.

02:54:51 2 Now, you should know that the law of the United
02:54:54 3 States permits a United States District Judge to comment to
02:54:57 4 the jury regarding the evidence in the case, but such
02:55:00 5 comments from the Judge on the evidence are only an
02:55:05 6 expression of the Judge's opinion.

02:55:07 7 And the jury can disregard those comments in their
02:55:09 8 entirety, because as I've said before, you, the jury, are
02:55:12 9 the sole judges of the facts. You are the sole judges of
02:55:16 10 the credibility and believability of the witnesses and how
02:55:19 11 much weight, if any, to give to all of the testimony that's
02:55:23 12 presented to you over the course of the trial.

02:55:25 13 So even though the law of the United States
02:55:28 14 permits me to offer comments on the evidence, as I told you
02:55:32 15 during jury selection, I'm going to work very hard not to
02:55:35 16 do that and not to indicate to you what I think about any
02:55:38 17 of the evidence presented over the course of the trial.
02:55:42 18 Evaluating and considering the evidence and from that
02:55:45 19 determining what the facts are in this case is your job,
02:55:49 20 ladies and gentlemen. It's not my job.

02:55:51 21 Now, the court reporter in front of me,
02:55:56 22 Ms. Holmes, is taking down everything that's said in the
02:55:59 23 courtroom. And the transcription of everything that's said
02:56:02 24 over the course of the trial is being prepared in case
02:56:06 25 there is an appeal of this case or for other purposes, but

02:56:09 1 I want you to understand it is not being prepared so that
02:56:13 2 you will have it to use as a resource during your
02:56:15 3 deliberations after you've heard all the evidence. You're
02:56:21 4 not going to have a written version of all this testimony.
02:56:24 5 You're going to have to rely on your memories of the
02:56:27 6 evidence over the course of the trial.

02:56:29 7 Now, in a moment, each member of the jury is going
02:56:31 8 to be given a juror notebook. And in the back of those
02:56:34 9 notebooks, you'll find legal pads, and you'll find a pen in
02:56:38 10 the front pocket where you can make notes as the witnesses
02:56:41 11 testify over the course of the trial.

02:56:42 12 It's up to each member of the jury to decide
02:56:45 13 whether you want to make notes, and if you want to take
02:56:48 14 notes, how extensively or not you want those notes to be.

02:56:53 15 But, remember, any notes taken by any member of
02:56:56 16 the jury are for that juror's personal use only. You still
02:56:59 17 have to rely on your memory of the evidence. And that's
02:57:03 18 why you need to pay close attention, as I'm sure you will,
02:57:06 19 to the testimony of each and every witness.

02:57:08 20 You should not abandon your own recollection
02:57:12 21 because some other juror's notes indicate something
02:57:17 22 differently. The notes that you take are to refresh your
02:57:20 23 recollection, and that's the only reason you should be
02:57:22 24 taking them.

02:57:23 25 I'm going to ask our Court Security Officer at

02:57:25 1 this time to pass out these juror notebooks to the members
02:57:28 2 of the jury.

02:57:29 3 Thank you, Mr. Johnston.

02:58:44 4 Ladies and gentlemen, in these notebooks, you'll
02:58:47 5 see that you each have a copy of each of the three
02:58:50 6 patents-in-suit. You're also going to find a section for
02:58:55 7 the witnesses that may testify in this case. And for each
02:58:59 8 witness that may testify, there should be a separate tabbed
02:59:02 9 page for that witness with their picture superimposed at
02:59:08 10 the top of the page and their name there, as well,
02:59:11 11 identifying them. The remainder of those pages have ruled
02:59:14 12 lines on there for note taking if you choose to do that at
02:59:18 13 that juncture.

02:59:19 14 You'll also find a chart in there that provides
02:59:22 15 you with the Court's construction or definitions of certain
02:59:26 16 parts of the language from the asserted claims. Those are
02:59:29 17 the definitions or constructions that I told you I have
02:59:33 18 already reached, and you must apply my constructions or
02:59:36 19 definitions to that claim language in deciding the issues
02:59:40 20 that you are required to decide.

02:59:42 21 You should find a chart with on one side the
02:59:47 22 language from the claims that needed to be construed or
02:59:50 23 interpreted by the Court, and directly across from it the
02:59:54 24 actual construction or definition that the Court has
02:59:56 25 already reached and given to you. You must use my

02:59:59 1 definitions or constructions as you discharge your duty as
03:00:03 2 jurors.

03:00:03 3 And, again, you should find a new three-hole
03:00:08 4 punched legal pad in the back for additional note taking.

03:00:10 5 Now, ladies and gentlemen, these notebooks should
03:00:14 6 be in your possession throughout the trial. They're not to
03:00:18 7 be left around loosely. They should either be with you in
03:00:21 8 the jury box where you are now, or they should be on the
03:00:24 9 table in the jury room.

03:00:27 10 At the end of each day, I'm going to ask you to
03:00:29 11 leave them on the table in the jury room as you exit the
03:00:33 12 courthouse and go to your respective homes. They'll be
03:00:38 13 there in the morning when you come back.

03:00:40 14 There may be one slight exception to this rule,
03:00:43 15 and that is over the course of the trial, we may take a
03:00:45 16 short recess or break where I will simply say, because I
03:00:48 17 know you're not going to be out of the jury box very long,
03:00:51 18 I may say, ladies and gentlemen, you can simply close and
03:00:54 19 leave your notebooks in your chairs. And in that case, you
03:00:58 20 can simply close them, put them where you're seated, and
03:01:00 21 they'll be there when you get back.

03:01:03 22 But unless I give you those kind of instructions,
03:01:06 23 they either need to be in your hands in your possession, or
03:01:10 24 they need to be on the table in the jury room and not left
03:01:14 25 out in the courtroom.

03:01:15 1 Now, in a moment, we're going to get to the
03:01:18 2 lawyers' opening statements. These opening statements,
03:01:20 3 ladies and gentlemen, are designed to give you a roadmap of
03:01:23 4 what each side expects that their evidence will show you.

03:01:30 5 You should remember throughout the trial, ladies
03:01:32 6 and gentlemen, that what the lawyers tell you is not
03:01:33 7 evidence. I'll say that again. What the lawyers tell you
03:01:38 8 is not evidence.

03:01:40 9 The evidence in this case will be the sworn
03:01:44 10 testimony from the witnesses from the witness stand who
03:01:47 11 testify to you subject to cross-examination, and that
03:01:50 12 includes any witnesses who present testimony through a
03:01:53 13 sworn deposition where you see and hear the testimony, but
03:01:57 14 the person is not physically present in the courtroom.

03:02:00 15 They've nonetheless been sworn and are under oath
03:02:02 16 and are subject to cross-examination, and that deposition
03:02:05 17 testimony and the live testimony of the witnesses who
03:02:09 18 appear and testify under oath in this courtroom and the
03:02:12 19 exhibits that you are shown that the Court has admitted
03:02:16 20 into evidence, those are the evidence in this case, nothing
03:02:20 21 else, and certainly not what the lawyers tell you.

03:02:23 22 Now, what the lawyers tell you is their impression
03:02:29 23 of what they believe the evidence is, and they have a duty
03:02:32 24 to try and point out to you where they believe the evidence
03:02:35 25 supports their side of the case.

03:02:37 1 But, remember, what they're telling you is not
03:02:40 2 evidence itself.

03:02:42 3 Now, after the lawyers present their opening
03:02:45 4 statements, the Plaintiff will go forward with its evidence
03:02:49 5 and its case. This is called the Plaintiff's
03:02:52 6 case-in-chief, and the Plaintiff will call its witnesses
03:02:55 7 and present its testimony.

03:02:56 8 After the witnesses have been called and
03:03:00 9 testified, cross-examined, and released by the Court and
03:03:04 10 all the Plaintiff's witnesses have been called, the
03:03:07 11 Plaintiff will rest its case-in-chief.

03:03:10 12 And when the Plaintiff rests its case-in-chief,
03:03:12 13 then we will transition to the Defendants' case-in-chief,
03:03:16 14 and the Defendants will call their witnesses and present
03:03:18 15 their testimony, and their witnesses will be cross-examined
03:03:22 16 by the Plaintiff.

03:03:23 17 And when all the Defendants' testimony and
03:03:25 18 witnesses have been presented, then the Defendants will
03:03:28 19 rest their case-in-chief.

03:03:32 20 At that point, the rules allow for the Plaintiff
03:03:35 21 to present what are called rebuttal witnesses to rebut what
03:03:38 22 the Defendants have shown in their case-in-chief. The
03:03:41 23 Plaintiff is not required to present rebuttal witnesses.
03:03:44 24 We won't know until we get to that point if the Plaintiff
03:03:47 25 chooses to.

03:03:48 1 But if the Plaintiff calls rebuttal witnesses,
03:03:51 2 then those witnesses will testify in the same way and will
03:03:54 3 be subject to cross-examination by the Defendants.

03:03:57 4 And when all the Plaintiff's rebuttal witnesses,
03:04:01 5 if any, have testified, then at that point, ladies and
03:04:03 6 gentlemen, you will have heard all the evidence in this
03:04:06 7 case.

03:04:06 8 Once you've heard all the evidence in this case,
03:04:11 9 then I will present to you my final instructions on the law
03:04:15 10 that you are to apply -- are to apply. Those instructions
03:04:19 11 from the Court to the jury are sometimes called the Court's
03:04:22 12 charge to the jury.

03:04:24 13 Once I've given you my charge, my final
03:04:26 14 instructions, then the lawyers for both sides will present
03:04:29 15 their closing arguments to you.

03:04:32 16 And once the closing arguments have been completed
03:04:35 17 by both sides, then I will instruct you to retire to the
03:04:39 18 jury room, I will send with you the verdict form that
03:04:44 19 contains the questions in it that you are to answer, and at
03:04:48 20 that magic moment, you go from being precluded from talking
03:04:52 21 to each other about the evidence, to being obligated to
03:04:55 22 talk to each other about the evidence as a part of
03:04:58 23 addressing those questions and doing your best to come to a
03:05:01 24 unanimous conclusion and answer to each of those questions
03:05:04 25 in the verdict form.

03:05:04 1 As I've said earlier, you are not to discuss the
03:05:09 2 case and you are not to communicate about the case with
03:05:12 3 anyone in any way, including the eight of yourselves, until
03:05:17 4 such time as all the evidence has been heard, you've
03:05:20 5 received my final instructions, you've heard counsel's
03:05:23 6 closing arguments, and I instruct you to retire to the jury
03:05:26 7 room and to deliberate and consider your verdict in this
03:05:32 8 case.

03:05:32 9 That's when it all changes. That's when you must
03:05:35 10 discuss the evidence with each other in attempting to
03:05:37 11 answer those questions and come to a unanimous decision
03:05:40 12 about the proper answers to those questions.

03:05:43 13 Let me also remind you, as I did earlier, that
03:05:46 14 throughout this trial, there are going to be unavoidable
03:05:49 15 times when you are in close proximity or pass right by one
03:05:53 16 or more of these lawyers, one or more of these party
03:05:55 17 representatives, one or more of these witnesses, or some
03:05:59 18 support person from each trial team.

03:06:01 19 You can look out in this courtroom. Most of the
03:06:04 20 people out there are not spectators. Most of the people
03:06:08 21 out there are associated with one side or the other in this
03:06:10 22 case.

03:06:12 23 And when you come in close proximity to one or
03:06:15 24 more of these folks, they're not going to speak. They're
03:06:18 25 not going to be friendly. They're not going to stop and

03:06:21 1 start a conversation with you. And when that happens,
03:06:23 2 don't hold it against them. Don't think they're being rude
03:06:25 3 or unfriendly or penalize them in any way. They are simply
03:06:29 4 doing what I have instructed them they have to do. And
03:06:32 5 please keep that in mind.

03:06:34 6 Now, with these instructions, ladies and
03:06:36 7 gentlemen, we will proceed to hear opening statements from
03:06:39 8 the parties. We'll begin with the Plaintiff's opening
03:06:42 9 statement.

03:06:42 10 Mr. Fenster, you may present Plaintiff's opening
03:06:52 11 statement. Do you want some warning or direction on your
03:06:57 12 time, sir?

03:06:58 13 MR. FENSTER: No, Your Honor. Thank you.

03:06:59 14 THE COURT: All right. I understand Mr. Ward will
03:07:00 15 also be sharing the time with you. But you may proceed
03:07:04 16 with the beginning portion of your opening statement,
03:07:06 17 Mr. Fenster.

03:07:06 18 MR. FENSTER: May it please the Court.

03:07:33 19 Good afternoon, ladies and gentlemen. My name is
03:07:36 20 Marc Fenster, and together with Mr. Ward and our team, we
03:07:39 21 have the pleasure of representing the Plaintiff in this
03:07:41 22 case, Solas OLED.

03:07:43 23 On behalf of Solas OLED and Mr. Gerry Padian, the
03:07:50 24 co-founder, first, I want to thank you. I want to thank
03:07:53 25 you for your sacrifice. This is, as Judge Gilstrap told

03:07:57 1 you, an important case, and we understand, especially in
03:08:00 2 these extraordinary times, the extraordinary sacrifices
03:08:05 3 that each of you are making to be here to help decide this
03:08:09 4 important matter.

03:08:09 5 Our job in opening, as Judge Gilstrap told you, is
03:08:14 6 to give you a roadmap of what the evidence will show in
03:08:17 7 this case. As you've heard, this is a patent case, and the
03:08:22 8 technology in this case is complicated, but the issues are
03:08:26 9 pretty simple.

03:08:28 10 You may have heard of that book, All I Really Need
03:08:31 11 to Know I Learned in Kindergarten. Play fair. Don't take
03:08:36 12 what doesn't belong to you. Take responsibility for your
03:08:40 13 own actions.

03:08:42 14 Well, this case is about Samsung's infringement of
03:08:47 15 Solas's patented inventions. Samsung took what didn't
03:08:53 16 belong to them and used it without permission for years,
03:08:58 17 and that's what we're going to prove to you over the course
03:09:01 18 of this case.

03:09:01 19 It's undisputed that Sam -- Solas owns the three
03:09:09 20 patents at issue in this case. It's also undisputed,
03:09:12 21 ladies and gentlemen, that Samsung does not have permission
03:09:16 22 or a license to use these patents.

03:09:20 23 This case is about Samsung's infringement of
03:09:25 24 Solas's patents and how much Samsung owes Solas for its use
03:09:30 25 of those patents in its best-selling phones for years and

03:09:34 1 years.

03:09:34 2 As you heard -- as you saw in the patent video
03:09:39 3 this morning, our founding fathers believed that patent
03:09:45 4 rights were so fundamental to the success of our country
03:09:49 5 that they wrote the patent system right into the very first
03:09:53 6 article of the Constitution of the United States. The
03:09:56 7 driving principle of our patent system is that awarding
03:10:04 8 patents to inventors is the best way to encourage
03:10:06 9 innovation. Abraham Lincoln, I think, said it best. He
03:10:14 10 said that patents added the fuel of interest to the fire of
03:10:18 11 genius.

03:10:18 12 Now, fundamentally patents are property rights, no
03:10:23 13 different than owning your homestead or a piece of land.
03:10:26 14 And just like someone can't trespass on your property
03:10:30 15 without your permission, no one can use your patented
03:10:33 16 invention without your permission.

03:10:34 17 Now, Mr. Padian is the co-founder and director of
03:10:40 18 Solas. He's going to be here throughout trial representing
03:10:44 19 Solas, and he will testify live for you. He will explain
03:10:48 20 Solas's mission, how Solas came to own the patents-in-suit,
03:10:54 21 and he will explain the investment and hard work that Solas
03:10:57 22 and its employees had to make to be here.

03:10:59 23 Now, Solas's patents cover inventions related to
03:11:08 24 flexible touchscreen displays. These are the advanced
03:11:12 25 touchscreen displays that are in Samsung's mobile phones.

03:11:16 1 AMOLED, you'll hear that term, it's called
03:11:19 2 Active-Matrix Organic Light-Emitting Diode. We're going to
03:11:22 3 explain all this. You'll learn what that is. It's
03:11:26 4 basically the latest and greatest in the displays that we
03:11:29 5 have.

03:11:30 6 You need two things to make a touchscreen display.
03:11:35 7 First, you need a display to make the image underneath.
03:11:39 8 And on top of that, you need the touchscreen sensor, the
03:11:43 9 touch sensor. So you need two things to make a touch
03:11:48 10 sensor display. You need the display and the touch sensor.

03:11:50 11 This case is about Samsung's infringement of three
03:11:55 12 of Solas's patents. One of Solas's patents, the '311
03:12:00 13 patent, relates to the touch sensor part of that
03:12:03 14 touchscreen display. That's the Atmel flexible touch
03:12:08 15 sensor patent. And the other two patents relate to the
03:12:11 16 display itself and how those are made.

03:12:14 17 First, we'll talk about the '311 patent. You'll
03:12:18 18 hear testimony from the inventors of the '311 patent.

03:12:23 19 First, you'll hear from Mr. Jalil Shaikh. He was
03:12:26 20 an engineer at Atmel. He was in charge of the project that
03:12:31 21 became the '311 patent, and he will testify and will --
03:12:35 22 you'll also hear from Mr. Yilmaz, who was an inventor on
03:12:40 23 the patent, as well.

03:12:40 24 You will learn that Atmel was a pioneer in
03:12:47 25 flexible touch sensor display technology at the relevant

03:12:49 1 time.

03:12:49 2 Mr. Shaikh and Mr. Yilmaz will tell you how and
03:13:00 3 why Atmel developed a flexible touch sensor made of metal
03:13:02 4 mesh, which you'll learn about, that is configured to wrap
03:13:08 5 around the edge of a curved display.

03:13:10 6 They'll testify that they had the original idea
03:13:13 7 back in January 2011. That's an important date because
03:13:17 8 that's the date of invention for the '311 patent.

03:13:20 9 And they will tell you that they diligently worked
03:13:23 10 to reduce that to make a working prototype of that, which
03:13:27 11 they did by July of 2011.

03:13:29 12 Atmel then filed a patent application for its
03:13:37 13 invention in October of 2011. The United States Patent
03:13:41 14 Office reviewed that patent application for four and a half
03:13:44 15 years and finally determined that it was worthy of a
03:13:49 16 patent, that it met all of the requirements necessary for a
03:13:52 17 patent, and that a patent should be awarded, and that a
03:13:56 18 patent was awarded in February 2016.

03:14:01 19 Now, it is not necessary for us to show that
03:14:04 20 Samsung knew about the patent to show infringement. You
03:14:08 21 don't have to know about a patent to infringe it. All you
03:14:12 22 have to do is infringe the claims.

03:14:13 23 But in this case, we're going to show you evidence
03:14:16 24 that Samsung knew about the '311 invention and even knew
03:14:22 25 about the '311 patent itself before they started infringing

03:14:26 1 the '311 patent.

03:14:27 2 Now, how is that so?

03:14:32 3 Samsung was a customer of Atmel's throughout the
03:14:36 4 time period of 2011 to 2016. And Mr. Shaikh and Mr. Yilmaz
03:14:43 5 will testify that as Atmel was developing their flexible
03:14:48 6 touch sensor, they made regular presentations to Samsung
03:14:53 7 showing them what they came up with. All of these
03:14:56 8 presentations were marked confidential.

03:15:00 9 This is PTX- -- Exhibit PTX-650, and it's an
03:15:07 10 example of one of the presentations that Mr. Shaikh will
03:15:12 11 testify about that they gave to their customers, including
03:15:15 12 Samsung.

03:15:16 13 It was about their flexible touch sensor display,
03:15:22 14 which they called XSense, and they made these presentations
03:15:24 15 to show some of the things that you can do with the
03:15:28 16 flexible touch sensor that they came up with.

03:15:31 17 This is one of the examples from one of the pages
03:15:37 18 in the '650 [sic] patent. This is an actual working sample
03:15:44 19 that the Atmel engineers made of a flexible touch sensor
03:15:47 20 that curved around the edge that goes -- that is made to go
03:15:51 21 on a display. And they even showed what a phone made with
03:15:54 22 that display could look like.

03:15:59 23 So Atmel made lots of presentations to Samsung
03:16:06 24 throughout this time. Starting in 2011, in 2012, in 2013,
03:16:13 25 all the way through 2016 when the patent issued, Atmel was

03:16:19 1 making these presentations to Samsung.

03:16:22 2 The patent issued then in February 2016. We will
03:16:28 3 show you evidence that Samsung found out about the '311
03:16:32 4 patent right after it issued. This is Exhibit PTX-103.
03:16:38 5 It's one of the exhibits that you'll see and hear in this
03:16:41 6 case.

03:16:42 7 And this is an internal confidential Samsung
03:16:44 8 document where Samsung made a search for patents relevant
03:16:49 9 to metal mesh displays.

03:17:03 10 So Samsung -- this is the -- this is PTX-103,
03:17:07 11 excuse me. And it shows that Samsung made -- did a search
03:17:12 12 for patents. And look what comes up at No. 3. It's the
03:17:17 13 '311 patent. This document is dated March 2016.

03:17:21 14 Your Honor, may I pause for a second?

03:17:43 15 THE COURT: We're going to take about a
03:17:45 16 five-minute recess.

03:17:47 17 Ladies and gentlemen, if you'll just leave your
03:17:49 18 notebooks in your chairs, we'll be back shortly to continue
03:17:53 19 with Plaintiff's opening statement.

03:17:55 20 The jury is excused for recess.

03:17:57 21 COURT SECURITY OFFICER: All rise.

03:17:59 22 (Jury out.)

03:18:26 23 THE COURT: Be seated, please.

03:18:39 24 Let me explain to you, counsel, why I just
03:19:09 25 recessed the jury in the middle of Plaintiff's opening.

03:19:12 1 Juror No. 3, I believe it is, Ms. Carpenter,
03:19:17 2 handed a note to the Court Security Officer, who brought it
03:19:20 3 to me, that she was feeling sick. I understand she's
03:19:23 4 nauseated. I'm going to get -- give her a minute in the
03:19:26 5 restroom to see if things don't clear up. I don't know if
03:19:29 6 it's -- I don't know what the cause of it is. That's all I
03:19:33 7 know. But given that it was an immediate situation that
03:19:39 8 couldn't wait, I felt like I had no alternative but to
03:19:43 9 recess the jury.

03:19:44 10 We're going to stand in recess. I'm going to ask
03:19:46 11 the Court Security Officer and the clerk's office to
03:19:49 12 monitor Ms. Carpenter's situation in the next few minutes,
03:19:53 13 keep me up-to-date on where we are, and as soon as I know
03:19:56 14 whether we have a continuing problem or a temporary problem
03:20:00 15 that's over with, I'll let counsel know, and we'll
03:20:03 16 reconvene.

03:20:04 17 We stand in recess.

03:20:04 18 COURT SECURITY OFFICER: All rise.

03:20:05 19 (Recess.)

03:20:07 20 (Jury out.)

03:20:07 21 COURT SECURITY OFFICER: All rise.

03:45:24 22 THE COURT: Be seated, please.

03:48:44 23 Counsel, as I mentioned before I left the bench,
03:48:53 24 one of our jurors, Ms. Carpenter, No. 3, sent me a note in
03:48:59 25 the middle of Plaintiff's opening statement saying, I am

03:49:02 1 getting sick.

03:49:05 2 In response to that note, I recessed, allowed her
03:49:09 3 an opportunity to go to the jury room and the restroom
03:49:14 4 adjacent thereto and see how things were.

03:49:16 5 I directed the Court -- the deputy in charge for
03:49:19 6 this division, Ms. Clendening, to talk to Ms. Carpenter,
03:49:23 7 see what her situation is, and my understanding from
03:49:28 8 Ms. Clendening's report is that Ms. Carpenter has a certain
03:49:31 9 level of anxiety that she believed caused her to become
03:49:36 10 nauseated. And it is not something that probably is a
03:49:41 11 one-time situation, and we have no real assurance that it
03:49:46 12 won't repeat itself over the course of the trial.

03:49:50 13 That being the case, I met with counsel for
03:49:53 14 Plaintiffs and Defendants in chambers, relayed that
03:49:55 15 information to them, and the consensus of the parties and
03:50:00 16 the Court was that we would probably be better served by
03:50:03 17 excusing Ms. Carpenter to prevent the possibility, and it
03:50:11 18 seems to be a pretty good possibility, that this would be,
03:50:13 19 at least to some extent, a recurring situation.

03:50:16 20 My understanding from counsel is they've talked
03:50:20 21 with their corporate representatives, and both
03:50:24 22 Plaintiffs -- Plaintiff and Defendants are agreeable that
03:50:26 23 Ms. Carpenter should be excused.

03:50:29 24 Is that -- does that comport with your
03:50:32 25 understanding, Mr. Fenster, for Plaintiff?

03:50:34 1 MR. FENSTER: Yes, it does, Your Honor.

03:50:35 2 THE COURT: Mr. Haslam, for Defendants?

03:50:37 3 MR. HASLAM: Yes, it does.

03:50:38 4 THE COURT: All right. Thank you.

03:50:38 5 Mr. Latham, I'm going to ask you as the Court

03:50:42 6 Security Officer to go to the jury room and ask

03:50:45 7 Ms. Carpenter by herself to come in and just have a -- ask

03:50:49 8 her to have a seat right there on the front, first chair of

03:50:53 9 the jury box, all right?

03:50:55 10 Leave the other members of the jury in the jury

03:50:58 11 room, please.

03:51:09 12 COURT SECURITY OFFICER: All rise, please.

03:51:14 13 (Juror in.)

03:51:18 14 THE COURT: Just have a seat right there, please,

03:51:20 15 Ms. Carpenter.

03:51:21 16 Be seated, please.

03:51:22 17 Ms. Carpenter, I asked Ms. Clendening to visit

03:51:27 18 with you during the recess, and she's reported the

03:51:31 19 conversation the two of you had, and I relayed that to

03:51:34 20 counsel. And we've discussed it, and the consensus is that

03:51:37 21 it would be best for all parties if I excuse you from

03:51:41 22 serving on this jury, and that's what I'm going to do. I'm

03:51:44 23 excusing you.

03:51:47 24 I'm going to ask you in just a minute to go back

03:51:50 25 in the jury room. Ms. Clendening is here in the courtroom,

03:51:52 1 and she's going to meet you back there. Any questions you
03:51:55 2 have, she'll answer them for you. Any information you
03:51:59 3 need, she'll furnish it to you. And she'll make sure you
03:52:02 4 have all your personal belongings and escort you to your
03:52:07 5 vehicle so that you can go home and get better.

03:52:09 6 JUROR: Thank you very much.

03:52:11 7 THE COURT: And then we'll proceed with the
03:52:12 8 remaining seven members of the jury. I would just ask that
03:52:15 9 you not have a big discussion with the rest of the jury
03:52:18 10 when you go back.

03:52:19 11 JUROR: No, no.

03:52:20 12 THE COURT: And we wish you well and hope that
03:52:22 13 this is not a problem that causes you any inconvenience in
03:52:27 14 the future. Thank you for being here. You are excused.

03:52:28 15 JUROR: Sir, I'm sorry this happened, but I don't
03:52:31 16 never know when a panic attack is going to hit me and
03:52:35 17 everything. And I'm very sorry for -- you know, it
03:52:39 18 happened.

03:52:40 19 THE COURT: I understand, and there's no need to
03:52:42 20 apologize. We're just dealing with it as best we can.

03:52:45 21 JUROR: Thank you.

03:52:46 22 THE COURT: We appreciate your attitude.

03:52:48 23 JUROR: Thank you.

03:52:48 24 THE COURT: But, Ms. Carpenter, please travel
03:52:50 25 safely. You're excused.

03:52:53 1 If you'll take her back to the jury room, please,
03:52:57 2 Mr. Latham, Ms. Clendening will meet you there.

03:52:59 3 And if you'll come back to the courtroom,
03:53:02 4 Mr. Latham, when you're finished depositing her.

03:53:09 5 (Juror out.)

03:53:10 6 THE COURT: If you, Mr. Latham, will give her just
03:53:10 7 a minute to meet Ms. Clendening, and as soon as she and
03:53:13 8 Ms. Clendening have met in the jury room, if you'll bring
03:53:14 9 the other seven members of the jury into the courtroom and
03:53:17 10 put them in the jury box.

03:53:19 11 Everybody just remain standing.

03:53:26 12 Go ahead and see about that for me, please.

03:53:37 13 Mr. Fenster, you were at 10 minutes your time.
03:53:39 14 I'm going to give you 10 minutes and 30 seconds.

03:53:43 15 MR. FENSTER: Thank you.

03:53:43 16 THE COURT: Give you 30 seconds extra.

03:53:47 17 MR. FENSTER: Thank you.

03:53:53 18 (Jury in.)

03:53:53 19 THE COURT: Please be seated.

03:54:15 20 Ladies and gentlemen of the jury, I have excused
03:54:23 21 Ms. Carpenter. She has some issues that I'm not going to
03:54:27 22 discuss in detail with you. But I will simply tell you
03:54:30 23 that consulting with both the Plaintiffs and the
03:54:33 24 Defendants, the Court reached the conclusion that the best
03:54:36 25 thing to do was to excuse her, and we'll proceed just as we

03:54:40 1 were. Instead of eight, we'll have seven. And everything
03:54:43 2 that I've told you so far still applies.

03:54:45 3 Mr. Fenster was about 10 minutes into the
03:54:48 4 Plaintiff's opening statements. I'm going to allow him to
03:54:50 5 continue. He's going to hand off at some point to Mr. Ward
03:54:54 6 who will finish the Plaintiff's opening statement.

03:54:57 7 And so that you can briefly recap where you were
03:54:59 8 and get back into your opening statement, Mr. Fenster, I'm
03:55:02 9 going to afford you an additional 30 seconds on your time.

03:55:05 10 MR. FENSTER: Thank you, Your Honor.

03:55:05 11 THE COURT: Please proceed when you're ready.

03:55:06 12 MR. FENSTER: Welcome back, ladies and gentlemen.

03:55:11 13 So just to recap, we were talking about how Atmel
03:55:15 14 had a relationship with Samsung, how Atmel, after coming up
03:55:19 15 with the '311 Flexible touch sensor, had disclosed that in
03:55:24 16 presentations to Samsung, and then Samsung's internal
03:55:28 17 document actually showed that it learned about the '311
03:55:31 18 patent right after it issued.

03:55:32 19 So the patent issues on February 9, 2016. Samsung
03:55:38 20 internal documents show that they learned about the '311
03:55:42 21 patent and -- in March 2016, and Samsung releases its first
03:55:46 22 infringing phone, the S8, in 2017.

03:55:52 23 Even though it knew about the patent, after
03:55:55 24 learning all of the information from Atmel, Samsung decided
03:55:59 25 to go ahead and do it alone without Atmel, even though it

03:56:03 1 didn't have permission.

03:56:04 2 Now, knowledge of a patent is not required for
03:56:10 3 infringement. You can infringe a patent even if you've
03:56:14 4 never heard of it. But knowledge of the patent is relevant
03:56:19 5 to the question of whether that infringement was willful.

03:56:22 6 And in addition to finding that Samsung is liable
03:56:27 7 for infringement, at the end of the case, after we've done
03:56:31 8 the hard work of showing you that their phones meet every
03:56:33 9 single element of the asserted claims, in addition to
03:56:41 10 finding Samsung liable for infringement, we're going to ask
03:56:44 11 you to find that that infringement was also willful.

03:56:47 12 Now, we bear the burden of proving infringement by
03:56:55 13 a preponderance of the evidence, as Judge Gilstrap
03:56:59 14 explained. To show infringement, we will present the
03:57:01 15 expert testimony of Mr. Thomas Credelle. Mr. Credelle is
03:57:09 16 an independent expert in display and touch sensor
03:57:13 17 technology. He'll explain that he has over 40 years of
03:57:16 18 real-world experience making, designing displays and touch
03:57:20 19 sensors.

03:57:22 20 Mr. Credelle analyzed all of the confidential
03:57:25 21 documents that Samsung had to give to us during discovery
03:57:28 22 before this case that described exactly how all of their
03:57:31 23 phones work, the precise design documents that show exactly
03:57:35 24 how they're made.

03:57:36 25 He reviewed all of the deposition testimony in

03:57:39 1 this case. And he went through and analyzed every single
03:57:43 2 phone, compared it to the claims, every single element.
03:57:51 3 And he will show you step-by-step, element-by-element, that
03:57:54 4 the accused phones infringe the asserted claims.

03:57:56 5 First, Mr. Credelle will show you how Samsung is
03:58:01 6 infringing the '311 patent. That's the Flexible touch
03:58:06 7 sensor configured to wrap around the curved edge of a
03:58:09 8 display. He will show you -- this is an example from the
03:58:16 9 S8, one of the infringing products. He will show you that
03:58:20 10 the Flexible touch sensor and the substrate are configured
03:58:23 11 to wrap around the curved edge of a display.

03:58:27 12 And he will show you, using Samsung's confidential
03:58:31 13 documents, that there is an intersection between the flat
03:58:34 14 surface on top and the curved surfaces on either side, and
03:58:39 15 that that display, the touch sensor, wraps around that
03:58:44 16 intersection, which is what the claim requires.

03:58:45 17 Now, this is the claim, Claim 7 of the '311
03:58:52 18 patent. There's a lot of words, and Mr. Credelle is going
03:58:56 19 to do the hard work to show you element-by-element that
03:58:59 20 every single one of these things is met. I don't have time
03:59:02 21 to do it now.

03:59:03 22 But I do want to point out 7d says: The
03:59:08 23 substantially flexible substrate and the touch sensor are
03:59:12 24 configured to wrap around one or more edges of the display.

03:59:16 25 Just -- I just wanted to point that out to you

03:59:21 1 because that's where the action is going to be regarding
03:59:23 2 the '311 patent.

03:59:25 3 And let me tell you about the two other patents,
03:59:29 4 and these relate to the AMOLED display. So the last patent
03:59:34 5 was about the touch sensor, and these two are about the
03:59:37 6 AMOLED display itself.

03:59:38 7 Now, these phones that we have in our pockets and
03:59:44 8 take -- take for granted every day are actually pretty
03:59:48 9 amazing. Samsung's display on a phone this size has 4.2
03:59:54 10 million pixels.

03:59:56 11 So this display is actually made up of 4.2 million
04:00:01 12 tiny points of light. They're called pixels. And every
04:00:05 13 one of those pixels has what they call an OLED, which is an
04:00:09 14 Organic Light-Emitting Diode. That's just a piece of
04:00:12 15 material that shines up -- that lights up when you pass an
04:00:16 16 electric current behind it.

04:00:18 17 And active matrix is kind of special because
04:00:22 18 behind every single one of those tiny points of light is a
04:00:28 19 teeny tiny circuit that controls how much current goes
04:00:32 20 through it and how bright that particular light is.

04:00:35 21 And this case is about the improvements to these
04:00:38 22 pixels and the tiny circuits, so small you can't even see
04:00:42 23 them, behind each and every one of those tiny points of
04:00:47 24 light or pixels.

04:00:49 25 Now, the '338 covers the improvement to the little

04:00:55 1 circuit behind each pixel. This is Claim 1. We're
04:01:03 2 asserting Claim 5, which is dependent on Claim 1, and
04:01:06 3 Mr. Credelle will go step-by-step. But I do want to point
04:01:09 4 out a couple of things about this claim.

04:01:12 5 All of our claims that are being asserted in this
04:01:14 6 case are what they call comprising claims. A display panel
04:01:18 7 comprising. And Judge Gilstrap explained that comprising
04:01:22 8 means includes. If it has these things, it infringes, even
04:01:26 9 if it has other things, as well.

04:01:28 10 So this claim is a display panel comprising. And
04:01:36 11 in 1a, it shows a plurality of transistors for each pixel.

04:01:42 12 So what is a plurality of transistors? We'll tell
04:01:46 13 you what a transistor is. You don't have to worry about
04:01:48 14 that yet. But a plurality is just two or more. It's not
04:01:51 15 limited to two. It's not limited to three. It's two or
04:01:54 16 more, a plurality.

04:01:55 17 And then if you go down to 1f, it says: Wherein
04:01:58 18 the plurality of transistors for each pixel includes three
04:02:03 19 particular pixels -- transistors, a driving transistor, a
04:02:07 20 switch transistor, and a holding transistor.

04:02:09 21 So we will show you that Samsung's products have a
04:02:15 22 plurality of transistors and that that plurality includes
04:02:19 23 these three transistors. It is not limited to only three.
04:02:23 24 It's a plurality.

04:02:25 25 And just like you all are a plurality of now seven

04:02:28 1 jurors, that includes Jurors 1, 2, and 3, so, too, is
04:02:37 2 Samsung's circuit. So you'll hear that Samsung's circuit
04:02:41 3 actually has seven transistors. They have a plurality of
04:02:44 4 seven transistors that include, Mr. Credelle will show you,
04:02:48 5 a driving transistor, a switch transistor, and a holding
04:02:53 6 transistor.

04:02:55 7 And Samsung infringes the '338 patent because its
04:03:00 8 plurality -- because it has a plurality of seven
04:03:03 9 transistors that include these three.

04:03:05 10 Let me go quickly to the '450 patent.

04:03:13 11 So the '450 patent has to do with how the pixel is
04:03:16 12 actually made. So before, there's a circuit and then
04:03:22 13 there's the OLED. And before they used to be made on the
04:03:24 14 same level of the circuit board, and they'd be sort of
04:03:28 15 side-by-side. And what Casio discovered is a particular
04:03:32 16 way to build them on top of each other, to build them
04:03:37 17 vertically, so to -- so as to improve the AMOLED display.
04:03:43 18 And that's what the '450 is about, and it's -- we call it
04:03:46 19 the stacking patent because it stacks up.

04:03:48 20 And you'll see in the claim, this is the '450,
04:03:51 21 Claim 4. Again, we'll go through every single one of these
04:03:57 22 elements. But what you'll see is that it has a bunch of
04:04:00 23 layers that are formed one on top of the other. It's got a
04:04:04 24 substrate. It's got active elements that are formed on
04:04:06 25 that. Others formed on top of that, et cetera. That's why

04:04:09 1 we call it the stacking patent. And we'll teach you all of
04:04:12 2 that. Mr. Credelle will go through that, and he'll do the
04:04:15 3 hard work.

04:04:15 4 We have the burden of proof, and I'm going to warn
04:04:18 5 you, Mr. Credelle's testimony is going to take a few hours
04:04:23 6 because he has to go through and show you, prove to you
04:04:27 7 that every one of the infringing phones really does meet
04:04:30 8 every one of the elements of the asserted claims. And
04:04:32 9 we're going to go through and walk you through his analysis
04:04:35 10 and the evidence for every one of those claims.

04:04:38 11 So I'm going to apologize and warn you upfront,
04:04:40 12 it's going to take some time. But we take our burden of
04:04:43 13 proof seriously, and we're going to show that to you.

04:04:46 14 Now, these are the infringing phones that are at
04:04:49 15 issue in this case. And there's a lot of them.
04:04:52 16 Mr. Credelle will show you that he went through and studied
04:04:56 17 every single one and compared them carefully to the claims.

04:04:59 18 And what you'll see at the end of this case, we
04:05:01 19 believe, is that Samsung is using Solas's patented
04:05:06 20 inventions in each of these models of its best selling
04:05:10 21 phones, and it has been in model after model, year after
04:05:14 22 year, taking advantage of Solas's inventions without paying
04:05:17 23 for the right to do so.

04:05:18 24 Now, we have the burden of proof on infringement,
04:05:22 25 so that's what I've been talking about.

04:05:25 1 Samsung has the burden of proof on validity. So
04:05:28 2 we'll let them talk about that, but we're confident that
04:05:30 3 they will not be able to show you by clear and convincing
04:05:33 4 evidence, the higher standard, that the Patent Office made
04:05:37 5 a mistake here.

04:05:37 6 In addition to infringement, we also bear the
04:05:41 7 burden of -- burden of proof on damages. And I'm going to
04:05:45 8 turn it over to Mr. Ward to talk to you about damages now.

04:05:48 9 But I thank you very much for your attention so
04:05:50 10 far.

04:05:51 11 MR. WARD: Your Honor, could you let me know how
04:05:56 12 much time I've got left?

04:05:58 13 THE COURT: 11 minutes.

04:05:59 14 MR. WARD: 11 minutes?

04:06:01 15 THE COURT: Yes.

04:06:02 16 MR. WARD: Okay. In the next 11 minutes I'm going
04:06:11 17 to talk to you about damages. I told you during voir dire
04:06:14 18 that this case is about \$88 million of damages. That's
04:06:17 19 what Solas intends to prove to you. In the next 10
04:06:21 20 minutes, I'm going to tell you briefly what evidence is
04:06:24 21 that supports that and why that evidence supports damages
04:06:28 22 of that amount and not the 1.6 million that Samsung says
04:06:31 23 they owe which corresponds to the amount of money that
04:06:34 24 Solas paid for these patents.

04:06:35 25 So where do we start? It's where I ended during

04:06:39 1 voir dire when I asked y'all if you could follow the law in
04:06:43 2 damages. Upon a finding of infringement, the Court shall
04:06:47 3 award the claimant damages adequate to compensate for the
04:06:51 4 infringement, but in no event less than a reasonable
04:06:54 5 royalty for the use made of the invention by the infringer.

04:06:57 6 It doesn't say limited to how much they paid for
04:06:59 7 the patents. It said limited -- or for the use made of the
04:07:03 8 invention.

04:07:03 9 We're going to bring you an expert, and he's going
04:07:06 10 to walk you through the evidence that supports his finding,
04:07:10 11 and he's going to talk about the use. It's Mr. Stephen
04:07:14 12 Dell. He's the founder of a company called NOVUM. Went to
04:07:19 13 the University of Texas. He's a certified valuation
04:07:22 14 analyst. He's got almost 20 years of experience. He's
04:07:26 15 been recognized as a leading expert in his field, and he's
04:07:30 16 done exactly what he's going to do in this case, a number
04:07:32 17 of times. He'll tell you about that experience.

04:07:35 18 He relied upon Mr. Credelle -- Dr. Credelle --
04:07:39 19 Mr. Credelle who told him about the benefits of the '311
04:07:42 20 patent invention. And you'll see this, and Mr. Credelle
04:07:44 21 will go through this in a lot of detail, what the benefits
04:07:47 22 of that invention were.

04:07:49 23 This is the touchscreen configured to wrap around
04:07:52 24 the edge.

04:07:53 25 And I want to talk to you about this document,

04:07:55 1 PTX-522, and it's blurred out because it's a confidential
04:07:59 2 Samsung document, and we can't show you these numbers in
04:08:02 3 open court, but we will.

04:08:04 4 But what I want to point out is that this is the
04:08:07 5 type of evidence that Mr. Dell relied upon when he figured
04:08:13 6 out what does this invention have? What is the value to
04:08:17 7 Samsung?

04:08:18 8 And this document talks about cost savings.
04:08:21 9 There's a percentage number about metal mesh. It's not
04:08:25 10 something we invented, but metal mesh sensors that wrap
04:08:28 11 around the edge is the invention, compared to something
04:08:32 12 called an ITO P1S sensor.

04:08:38 13 And you'll actually see they put this new sensor,
04:08:40 14 this new touch screen in the Galaxy S8. You can lay them
04:08:43 15 right next to each other and you won't be able to tell any
04:08:46 16 difference.

04:08:47 17 But they could tell the difference to their bottom
04:08:48 18 line, because you'll find that after the S8 and S8 Plus
04:08:53 19 where they were using these two different ones, everything
04:08:56 20 after that uses the metal mesh sensor configured to wrap
04:08:59 21 around the edge. And he'll tell you about those cost
04:09:02 22 savings.

04:09:03 23 I want to talk to you about a concept that you
04:09:06 24 probably have never heard of, I had never heard about it,
04:09:10 25 something called a hypothetical negotiation because that's

04:09:11 1 what Mr. Dell is going to do, that's what the Defendants'
04:09:14 2 damages expert is going to do.

04:09:15 3 They have to do that, because to figure out what
04:09:22 4 damages are owed, they set up something called a
04:09:22 5 hypothetical negotiation. It's hypothetical because at the
04:09:23 6 negotiation, Samsung is there, and actually Atmel, the
04:09:26 7 owner of the patent because that's -- they owned the patent
04:09:29 8 when the infringement started.

04:09:31 9 And they sit down across the table, and you know
04:09:34 10 what Samsung says during this hypothetical negotiation?
04:09:37 11 They say: We admit that we infringe, and we admit that
04:09:41 12 your patents are valid. Let's talk about what we owe. Not
04:09:45 13 what happens in the courtroom, because they deny those
04:09:48 14 things, but in the hypothetical negotiation, those things
04:09:50 15 are admitted.

04:09:52 16 There's something else that's called the book of
04:09:55 17 wisdom. You'll hear about that from Mr. Dell. You'll hear
04:09:57 18 about it from the Defendants' expert. It's like a crystal
04:10:00 19 ball. These parties get to know about all the future
04:10:03 20 sales, how well the product does, what are their profits,
04:10:07 21 how much money do they save up until the time of January
04:10:11 22 20 -- or January 31 of 2021 is when the damage period ends
04:10:17 23 for this patent, because there's still 11 years left on the
04:10:21 24 patent. We're not talking about the next 11 years. We're
04:10:24 25 talking about only up to January 31st of 2021.

04:10:31 1 And he will tell you that after looking at those
04:10:32 2 cost savings, he came up with a royalty rate of 1 percent.
04:10:35 3 What does that royalty rate apply to? You're going to hear
04:10:37 4 the term smallest salable patent practicing unit. And
04:10:42 5 what's coming up there is something called the OLED display
04:10:47 6 module, and he applies that 1 percent to that OLED display
04:10:51 7 module.

04:10:51 8 And, remember, infringement for importing, making
04:10:55 9 or selling. Samsung Display makes, they sell it to Samsung
04:11:01 10 Electronics who then sells it to Samsung America which
04:11:06 11 imports those phones. That's why we've accused them all of
04:11:09 12 infringement.

04:11:09 13 What he does, he'll show you how many sales there
04:11:12 14 are. Over 40 million displays using the '311 invention.
04:11:17 15 That's just up until January 31st.

04:11:21 16 At the average price, it's a big number, lots
04:11:24 17 of -- lots of revenue generated times a royalty rate.
04:11:28 18 He'll tell you that the damages owed up until January 31st
04:11:32 19 of 2021 are 35.4 million.

04:11:37 20 Mr. Dell is going to do the same thing with
04:11:40 21 respect to the '450 and the '338. He'll look at the
04:11:43 22 benefits that Mr. Credelle told him that he found from
04:11:48 23 those inventions, and, again, I don't have time to walk you
04:11:51 24 through all of these, but we're going to take the time,
04:11:53 25 we'll do the hard work, as Mr. Fenster told you, we'll look

04:11:56 1 at those benefits.

04:11:57 2 Samsung touted the benefits. These are brighter
04:12:04 3 displays. Now, we didn't invent AMOLED displays. Don't
04:12:09 4 let anyone say we're claiming that. But we did make them
04:12:13 5 better. These inventions from the patents that we
04:12:14 6 purchased from Casio do make the displays brighter.

04:12:18 7 And you'll learn that the '450 is actually
04:12:20 8 expired, so they can use it. And they don't have to pay
04:12:23 9 anything for it, but they have to pay for the last six
04:12:27 10 years that they did use it, and you'll see they used it a
04:12:30 11 lot.

04:12:30 12 The '338 patent is a patent that they stopped
04:12:32 13 using, but remember what the damages statute says, paid for
04:12:36 14 the use made of the invention. And that's what Mr. Dell
04:12:38 15 will calculate.

04:12:39 16 And the way he calculates is a little bit
04:12:41 17 different. He didn't look at cost savings. He didn't have
04:12:44 18 those type of documents. What he had were similar licenses
04:12:48 19 that Samsung had entered into. And this is a license with
04:12:51 20 a company called UDC, and we'll talk a lot about this.
04:12:55 21 Mr. Dell will tell you about it. And there were specific
04:12:59 22 license rates that Samsung agreed to pay, and it was
04:13:02 23 actually an OLED patent license agreement.

04:13:05 24 I want you to remember that when we talk about UDC
04:13:07 25 because Samsung says, don't rely upon this license, even

04:13:14 1 though this license was renewed repeatedly by Samsung.

04:13:21 2 They want to rely upon an LCD -- or a license that

04:13:24 3 primarily dealt with LCD technology that was entered into

04:13:29 4 between Casio and Samsung.

04:13:30 5 THE COURT: You have three minutes remaining, just
04:13:32 6 for your benefit.

04:13:33 7 MR. WARD: Thank you, Your Honor.

04:13:33 8 So if we go back to our friend, the hypothetical
04:13:37 9 negotiation, right, and -- and, again, you assume
04:13:41 10 infringement and validity. Samsung sits across the table
04:13:43 11 from Casio, and they say: We admit that we infringe your
04:13:47 12 valid patents. What do we owe? Mr. Dell will rely upon
04:13:52 13 that UDC license agreement, the OLED. And he says, 50 --
04:13:56 14 .5 percent per patent.

04:14:00 15 Same kind of math. Over 80 million displays sold
04:14:06 16 that infringe the '450 times that half percent rate. Over
04:14:10 17 84 million that infringe the '338 patent. And the numbers
04:14:13 18 are big because their sales are big. The numbers are big
04:14:16 19 because they used this property without permission.

04:14:20 20 Let me talk to you real briefly about a couple of
04:14:24 21 license agreements that the experts don't look at because
04:14:27 22 they were entered into after the expert report deadline.

04:14:31 23 So Mr. Padian is going to tell you about these.
04:14:35 24 One is with a company called eMagin, and this license is
04:14:39 25 for less than \$100,000. That's because their use is low.

04:14:47 1 You'll recall during voir dire, we talked -- or
04:14:50 2 Ms. Smith talked about a horse auction and maybe someone
04:14:54 3 bought an old mangy mare, an old mangy nag. I want you to
04:15:00 4 think about this license when Mr. Padian talks to you. I
04:15:03 5 can't tell you the amount. It was entered into just two
04:15:06 6 months ago with LG. I can't tell you the amount in open
04:15:09 7 court. But when he tells the amount for a license to the
04:15:12 8 Casio patents, including these three patents, but the
04:15:16 9 entire portfolio, you tell me if you think we're talking
04:15:19 10 about an old mangy mare.

04:15:23 11 Those are the total damages, \$88 million. And I
04:15:27 12 don't tell you 88 million thinking you'll -- you should
04:15:30 13 give us 44 million or 40 million. I tell you 88 million
04:15:34 14 because that's what the evidence is going to support.

04:15:37 15 And we look forward to presenting that evidence to
04:15:39 16 you all during the course of this week.

04:15:41 17 Thank you for your time.

04:15:42 18 THE COURT: All right. Defendants, you may now
04:15:47 19 present your opening statement to the jury.

04:16:04 20 Would you like a warning on your time, Mr. Haslam?

04:16:06 21 MR. HASLAM: Please. Seven minutes.

04:16:11 22 THE COURT: I'll tell you when you have seven
04:16:13 23 minutes remaining. You may proceed when you're ready.

04:16:16 24 MR. HASLAM: I'll push start, and I'm off.

04:16:18 25 Well, Mr. Ward and Ms. Smith had the opportunity

04:16:21 1 to answer the questions that you had to answer, so I'm
04:16:24 2 going to start off by telling you a little bit about
04:16:27 3 myself.

04:16:27 4 I come from California, I guess unfortunately, but
04:16:31 5 I've been there since 1969 when the Air Force stationed me
04:16:35 6 there. I've never lived in Texas, so my connections to
04:16:42 7 Texas I'm going to sort of stretch. But when I was in the
04:16:46 8 Air Force in California, the first two years I was there,
04:16:50 9 Gregg Popovich, who is the coach of the San Antonio Spurs,
04:16:55 10 was stationed at the same station, and I had the
04:16:58 11 opportunity to play basketball with him, although he was on
04:17:01 12 the court and I was on the bench.

04:17:03 13 I also -- my aunt and uncle moved to Marshall in
04:17:08 14 1970. He was with Alcoa. Unfortunately, they both passed
04:17:13 15 away, but they lived down on Bergstrom Circle. And I
04:17:20 16 remember coming down to a daughter -- a cousin's wedding in
04:17:23 17 1972. So I'm an interloper, but I've been here before, and
04:17:28 18 I've got some minor connection to Texas.

04:17:32 19 If I believed everything that Mr. Ward and
04:17:35 20 Mr. Fenster said they could prove, I'd get my checkbook out
04:17:39 21 right now. But, thankfully, the evidence that you're going
04:17:44 22 to see isn't going to lead you to where they want you to
04:17:47 23 go.

04:17:48 24 Now, they mentioned the Constitution. And, yes,
04:17:52 25 patents are in the Constitution to promote the progress of

04:17:57 1 the science and the arts. Their assumption is every patent
04:18:03 2 has great and beneficial use, but that's not the case. Not
04:18:07 3 every idea is a great idea. Some patents lead to dead
04:18:13 4 ends, and it's our belief that the three patents in this
04:18:18 5 case are of that type.

04:18:20 6 And you're going to find out that for the Casio
04:18:23 7 patents, they never used them. And nobody ever came to
04:18:30 8 them and said: Can we use them?

04:18:32 9 But notwithstanding what we think about the Casio
04:18:36 10 and Atmel patents, this case is about the Constitution. It
04:18:41 11 is about the progress of the arts and sciences. And the
04:18:46 12 progress here are the innovations that the three Samsung
04:18:52 13 Defendants made to bring all of us OLED displays which are
04:18:57 14 the brightest and the best on the market.

04:19:00 15 And they innovated a brand-new touch sensor in
04:19:06 16 2017, and I'll get to that in a moment.

04:19:08 17 Samsung Display, one of the companies and one of
04:19:15 18 the Defendants, is the company which makes the displays.
04:19:18 19 They're also responsible for building the touch sensor into
04:19:23 20 the display. They spent almost 20 years of research and
04:19:31 21 development trying to develop an OLED display that worked.

04:19:34 22 We're going to bring you two experts,
04:19:38 23 Dr. Fontecchio and Dr. Sierros, who will talk to you about
04:19:41 24 the Casio patents and the Atmel patent, and they'll explain
04:19:45 25 them to you, and they will explain the technology that's in

04:19:49 1 these products.

04:19:51 2 Samsung Display has also brought Mr. Kwak.

04:19:57 3 Mr. Kwak was the leader of the group of engineers and

04:20:01 4 support staff that pioneered the award-winning OLED

04:20:08 5 displays that Samsung sells. And he will tell you about

04:20:12 6 the trials and tribulations that he and his group went

04:20:18 7 through to bring all of us the touch -- the touch sensor

04:20:22 8 phones on the Samsung Galaxy phones from the Samsung

04:20:27 9 Galaxy 8 Plus forward.

04:20:30 10 Now, I want to talk to you about the two other

04:20:33 11 companies that are involved here. Samsung Electronics is

04:20:38 12 the company that buys the displays from Samsung Display and

04:20:42 13 makes the phones that we all use and like who have Galaxy

04:20:48 14 phones.

04:20:51 15 Samsung Electronics America is a U.S. company. It

04:20:56 16 has facilities in Plano, and it is in charge of taking the

04:21:00 17 phones that Samsung Electronics makes and commercializing

04:21:06 18 and selling those in the United States.

04:21:08 19 Mr. Joe Repice is here as a representative, and

04:21:17 20 you'll hear him testify later. And he will tell you, and I

04:21:20 21 believe that the work that Samsung Display did does not

04:21:27 22 borrow from or is not based upon the Casio patents.

04:21:32 23 Now, it's easy for me to sit here and talk about

04:21:40 24 what Samsung has done or not done, but let me put up a

04:21:45 25 little slide here, it's DDX-1.002.

04:21:50 1 2007, the first Active Matrix OLED display was put
04:21:59 2 in a smartphone.

04:22:00 3 In 2009 before the Atmel patent, they had the
04:22:04 4 first flexible AMOLED display.

04:22:07 5 June 2010, the Galaxy S1 was released with an
04:22:12 6 AMOLED display.

04:22:12 7 2014, the first mass-produced curved edge display
04:22:20 8 panel. It won an award at the Society for Information
04:22:25 9 Display.

04:22:25 10 And here's something you may not have known. When
04:22:28 11 Apple first introduced an OLED smartphone in 2017, Samsung
04:22:37 12 Display's OLED display was in that phone, and it is in that
04:22:42 13 phone today, iPhones that are OLED.

04:22:44 14 The Google Pixel phones, which are OLEDs, also
04:22:48 15 have Samsung Display's products in them.

04:22:57 16 Let me just tell you a little bit about the
04:22:59 17 Samsung products that Samsung Electronics makes and that
04:23:04 18 SEA sells. They've got phones, and you'll see the Z Flip
04:23:07 19 there, one of their newest models, on the top left.
04:23:08 20 There's a tablet. There's notes, and there's phones. They
04:23:13 21 also sell one other, the Galaxy S20, which is the phone
04:23:18 22 that I believe is involved in this case. They have a
04:23:21 23 tactical edition that they sell to the U.S. military, and
04:23:24 24 that's because the displays that they make are rugged
04:23:28 25 enough and the phones are rugged enough to be used in a

04:23:32 1 hostile environment.

04:23:33 2 Make no mistake, Samsung is not here saying they
04:23:45 3 have all the good ideas. They don't. In the past, Samsung
04:23:51 4 has paid others for the use of their patents and
04:23:54 5 technology, and I'm going to go over that a little bit
04:24:01 6 later.

04:24:01 7 But what they don't do is to pay for technology or
04:24:05 8 patents that they don't use, and that is what we believe
04:24:08 9 this case is about.

04:24:09 10 Now, who are the other -- who are the other
04:24:14 11 players? Casio and Atmel? Both of those were
04:24:20 12 multi-billion dollar companies. They made products. Some
04:24:22 13 of you said -- some of the people said this morning they
04:24:25 14 had Casio calculators or Casio watches. But Casio never
04:24:31 15 made an OLED display. And no one came to them and asked to
04:24:38 16 license the '450 and '338 patent.

04:24:42 17 And so when they say they want 88 -- 60 million
04:24:47 18 approximately for those two patents, ask yourself why
04:24:49 19 didn't Casio become the world leader in OLED displays if
04:24:55 20 these are such foundational patents, if you can't make OLED
04:25:02 21 displays without these?

04:25:04 22 And why did Atmel ultimately sell its touch sensor
04:25:09 23 business to Uni-Pixel, which two years later went bankrupt?
04:25:14 24 Because their products weren't the market leader. They
04:25:17 25 weren't the novel approach that's been hyped here in the

04:25:20 1 opening.

04:25:21 2 Now, you heard the Judge say that in order to
04:25:32 3 prove infringement, you will have to find that every
04:25:36 4 element of the claim, which is a series of elements, and
04:25:39 5 you saw Mr. Fenster put up some of those, you have to find
04:25:44 6 each and every one of those in the accused products. If
04:25:49 7 one element is missing, there is no infringement.

04:25:53 8 We believe the evidence is going to show for these
04:25:56 9 products that there are several of the requirements of the
04:26:01 10 claims which are not found in the Samsung products. And
04:26:05 11 the reason for that is because in developing their displays
04:26:12 12 with the built-in integrated touch sensors, they had to do
04:26:16 13 things that are not taught or claimed in the '450, the
04:26:24 14 '338, or the '311 patent.

04:26:27 15 I want to briefly touch -- we are going to argue
04:26:30 16 that the claims are invalid.

04:26:34 17 And I want to sort of correct one thing I think
04:26:39 18 Mr. Fenster said. We are not saying that the Patent Office
04:26:44 19 made a mistake. You will be the first people to see
04:26:55 20 patents that the Patent Office did not have.

04:27:00 21 Casio and Atmel didn't provide them to the Patent
04:27:06 22 Office. I'm not saying that's wrong. The patent examiner
04:27:08 23 didn't find them, and so the patent examiner did what he
04:27:12 24 could with the information he had.

04:27:19 25 You will see information that the patent examiner

04:27:22 1 did not.

04:27:23 2 So we're not asking you to second-guess a decision
04:27:26 3 that the patent examiner made. Effectively, we're going to
04:27:29 4 ask you to do what the patent examiner, we believe, would
04:27:32 5 have done had he seen these prior patents about what other
04:27:38 6 people had invented which made the patents invalid or, as
04:27:44 7 the Judge told you, obvious in light of what somebody else
04:27:49 8 had. That the improvement that they may claim in the
04:27:52 9 patent wasn't sufficiently inventive that you're entitled
04:27:56 10 to a patent.

04:27:57 11 And the invalidity based on anticipation and
04:27:59 12 obviousness is in the statute that Congress, pursuant to
04:28:08 13 the Constitution, passed and put in the patent laws.

04:28:12 14 So they put a brake on attempting to claim
04:28:18 15 innovations that you didn't actually make and deserve.

04:28:25 16 THE COURT: Let's move on, Mr. Haslam. You're
04:28:27 17 getting argumentative here. This needs to be informative,
04:28:32 18 not argumentative.

04:28:33 19 MR. HASLAM: Okay. Let me talk a little bit then
04:28:35 20 about how Atmel -- Samsung made its touch sensors. I'm
04:28:41 21 going to start with the '311.

04:28:43 22 The fact is Samsung came out with its first OLED
04:28:52 23 phone in 2009. It had a touch sensor on it. The original
04:28:59 24 iPhone in 2007 had a touch sensor on it. As a matter of
04:29:04 25 fact, I don't know if you know about the BlackBerry, which

04:29:07 1 had the mechanical buttons, but BlackBerry said: Well, the
04:29:12 2 iPhone will never be successful because it doesn't have
04:29:15 3 mechanical buttons. It had a touch sensor instead. And
04:29:19 4 since then, those phones and the Galaxy phones have had
04:29:23 5 touch sensors.

04:29:24 6 And I want to just show you, these are two
04:29:27 7 physical exhibits that you will have before you when you
04:29:31 8 retire. And hopefully we'll be able, if we can manage the
04:29:39 9 health issues, that you may see it when it's passed around
04:29:43 10 as a result of the evidence.

04:29:44 11 But in my right hand I have -- and you can see the
04:29:47 12 wiring on it -- a touch sensor, and it is on a flexible
04:29:51 13 base to support the touch sensor. And what Samsung did is
04:29:58 14 it bought this kind of external touch sensor from other
04:30:02 15 companies. And it would take that touch sensor, and it
04:30:07 16 would glue it on to a display.

04:30:13 17 So it was an external touch sensor that had a
04:30:16 18 separate base or substrate and the touch sensor on top of
04:30:24 19 it. And that's important, because that is, we believe,
04:30:27 20 what the Atmel '311 patent claims.

04:30:30 21 And the external touch sensors that Samsung used
04:30:39 22 were made by other companies, and the touch sensors and the
04:30:46 23 phones and the displays on which those touch sensors were
04:30:52 24 placed had the same kind of bend that the edge of the
04:30:57 25 display that they claim infringes the '311.

04:31:01 1 Those phones are not accused of infringement
04:31:04 2 because of the kind of material that was used for the touch
04:31:07 3 sensor. It wasn't a metal mesh touch sensor.

04:31:12 4 In 2007 -- 2017, what is now accused of
04:31:18 5 infringement is just this. It looks like the display. It
04:31:23 6 is the display. But the touch sensor no longer is a
04:31:31 7 separate piece that Samsung Display has to buy from some
04:31:35 8 other company. They innovated and put the touch sensor
04:31:44 9 directly into the display.

04:31:47 10 This is thinner than this kind of touch sensor
04:31:53 11 that the Atmel claim covers. It's less expensive, and it
04:32:00 12 is easier to manufacture. And it eliminates the need to
04:32:07 13 have somebody else in your supply chain, like an Atmel or a
04:32:10 14 3M or somebody else.

04:32:12 15 That's what they accuse of infringement. And we
04:32:17 16 believe the evidence is going to show you that this kind of
04:32:20 17 a display that has an integrated touch sensor does not
04:32:25 18 infringe.

04:32:25 19 So you were shown the claim. Mr. Fenster pointed
04:32:33 20 to the issue of wrap around the edge of the display. And I
04:32:39 21 want to show you what the -- an example of what the '311
04:32:44 22 patent says is an example of what wrapping around the edge
04:32:49 23 of the display means.

04:32:51 24 What I've got here on the left is the face page of
04:32:59 25 the '311 patent. And on the right, I have Figure 7 of the

04:33:03 1 patent. This is Figure 7. And it is described in Column 7
04:33:09 2 of the patent.

04:33:12 3 You have the patents in your book, and patents do
04:33:16 4 not have page numbers. They have -- if you look at the top
04:33:21 5 of the page after the -- after the figures, you'll find two
04:33:26 6 columns that are labeled 1, 2, the next page will label it
04:33:31 7 3, 4, 5, 6. And then down the page, you will have line
04:33:37 8 numbers, and, generally speaking, there are 65 lines in
04:33:40 9 each column.

04:33:42 10 But if at some point you want to look at the
04:33:45 11 patent, look at Column 7, beginning about halfway down, and
04:33:49 12 that paragraph describes what the patent says about the
04:33:57 13 touchscreen and how it relates to the flexible substrate
04:34:01 14 and how it relates to a display.

04:34:03 15 But Figure 7 is described as an example of what
04:34:07 16 wrapping around the edge of a display is.

04:34:10 17 There's a clear cover on the top, and that's just
04:34:13 18 the glass panel.

04:34:15 19 One thing I want you to notice is you notice on
04:34:19 20 the side of the clear cover panel --

04:34:22 21 MR. WARD: Your Honor, I object. He's comparing
04:34:24 22 an embodiment to -- for infringement. He ought to be
04:34:30 23 looking at the claim. This is improper. It violates the
04:34:33 24 Court's rules in three different ways.

04:34:35 25 THE COURT: Well, the purpose of opening

04:34:37 1 statement, which is not opening argument, is to tell the
04:34:39 2 jury what you expect the evidence will show. And I'm
04:34:46 3 having a hard time following you, Mr. Haslam, if this is
04:34:49 4 what you believe the evidence is going to show.

04:34:52 5 I'm going to overrule the objection.

04:34:58 6 But you need to move on.

04:35:00 7 MR. HASLAM: The touch sensor is just the middle
04:35:03 8 part, and that's what the -- what we believe the evidence
04:35:07 9 is going to show was Atmel's invention.

04:35:09 10 Now, there were some statements made that they
04:35:17 11 believe that, based on the relationship that Atmel and
04:35:21 12 Samsung had, that Samsung somehow took Atmel's confidential
04:35:28 13 information. That's not true.

04:35:33 14 Beginning in 2012, Samsung began looking for an
04:35:39 15 alternative supplier for the external touch sensor that it
04:35:44 16 was using.

04:35:45 17 Among the companies it evaluated was Atmel. It
04:35:50 18 also evaluated external touch sensors from 3M, LG, and
04:35:57 19 other companies. And the notion that the technology that
04:36:04 20 Atmel showed Samsung was what somehow Samsung took and used
04:36:10 21 in its phones I think is -- isn't borne out by the
04:36:14 22 evidence.

04:36:14 23 And I put up on the screen some of the excerpts
04:36:18 24 from an Atmel XSense evaluation in 2015. It's DTX-1148,
04:36:26 25 Pages 4 and 6.

04:36:28 1 And these are some of the things that Samsung told
04:36:33 2 Atmel that in evaluating its touch sensors it found. There
04:36:39 3 was a drawing defect in all areas. The mesh pattern is
04:36:44 4 reflected by outside light to become visible.

04:36:48 5 A metal mesh touch sensor has metal wires which
04:36:52 6 you can't see through. So one of the problems with a metal
04:36:57 7 mesh touch sensor is you have to make sure that the touch
04:37:01 8 sensor mesh is such that when it goes on the screen, you
04:37:06 9 see the display but not the wires. And this indicates that
04:37:10 10 there was an issue with the wiring becoming visible.

04:37:13 11 Is it possible to design around Moire? That's
04:37:20 12 just an issue, and you'll hear about that. It's a problem
04:37:23 13 that can be caused by something on top of the screen that
04:37:25 14 makes the picture look a little hazy.

04:37:28 15 And they were also asked if they can put their
04:37:30 16 touch sensor on a different material.

04:37:32 17 So, far from taking Atmel's confidential
04:37:42 18 information, Samsung actually, after this evaluation, did
04:37:49 19 go with a new touch sensor, but it was not -- that touch
04:37:54 20 sensor was not accused of infringement because didn't use
04:37:59 21 the same kind of metal mesh that Atmel did. It was bought
04:38:01 22 from a Japanese company.

04:38:13 23 Now, I want to go on to the Casio patents.

04:38:15 24 The '450 patent -- I put Claim 4 up here. Claim 4
04:38:25 25 is dependent on Claim 1, which means you would look to

04:38:29 1 Claim 1 to find the other information that you would need
04:38:35 2 to figure out whether it's infringed. You would have to
04:38:38 3 find everything in Claim 1, plus everything in Claim 4.

04:38:44 4 And you'll see that Claim 4 talks about a
04:38:47 5 selection transistor, a drive transistor forming a pair.
04:38:52 6 And the selection transistor has a certain function, and
04:38:57 7 the drive transistor has a certain function.

04:39:02 8 And Claim 1 of the '450 patent requires that those
04:39:05 9 transistors be placed in the circuit in specific relation
04:39:11 10 to other elements in the circuit. And we believe the
04:39:16 11 evidence is going to show that in the Samsung OLED
04:39:21 12 displays, those two transistors do not perform -- the two
04:39:25 13 transistors that they believe infringe this claim --

04:39:29 14 THE COURT: You have seven minutes remaining.

04:39:31 15 MR. HASLAM: -- are not the same functions and not
04:39:34 16 in the same location as the claim requires.

04:39:37 17 Now, the '338 is a three-transistor circuit, they
04:39:43 18 said. One of the inventors on the '450 is the same as one
04:39:50 19 of the inventors on the '338. That inventor recognized the
04:39:54 20 problems with the '450's two-transistor circuit.

04:40:00 21 They developed a three-transistor circuit,
04:40:03 22 which -- which required, as he said, a plurality of
04:40:08 23 transistors that included three specific ones. And that's
04:40:10 24 in the bottom of the claim here.

04:40:14 25 A driving transistor connected in a certain way; a

04:40:19 1 switch transistor which causes something to flow, called a
04:40:25 2 write current; and a holding transistor which must hold the
04:40:29 3 voltage between two specific connections.

04:40:32 4 Again, because of Samsung's innovation and the
04:40:34 5 need to use more transistors than just those three and
04:40:41 6 those three in their system, the ones they point to, do not
04:40:46 7 perform those functions. And that's what the evidence will
04:40:48 8 show.

04:40:49 9 And here is just the -- Samsung Display's
04:41:01 10 seven-transistor structure. And you'll be -- our experts
04:41:04 11 will explain and Mr. Kwak will explain how this transistor
04:41:08 12 circuit operates and why the transistors in here do not
04:41:11 13 perform the functions or are not located in the places that
04:41:18 14 the claims require.

04:41:18 15 Now, I want to just touch just briefly on the
04:41:20 16 invalidity issue. I want to show you two of the things
04:41:24 17 that you're going to see, we believe in this case, that we
04:41:27 18 believe the Patent Office hadn't seen it, would not have
04:41:32 19 issued the '311 patent.

04:41:34 20 This is a United States patent, the Chen, it's a
04:41:37 21 touch sensor. Apple is the assignee who owns this patent.
04:41:41 22 And here on the left-hand side is -- the gray is what we
04:41:50 23 see on the right-hand side. A display, an OLED display
04:41:53 24 with red, green, and blue pixels that make all the colors,
04:42:00 25 a glue layer, a flexible substrate, and a touch sensor.

04:42:04 1 And that touch sensor on the display is on the
04:42:08 2 top, goes around the edge, and down the side. And the
04:42:10 3 virtual button there was intended to take the place of a
04:42:15 4 mechanical button. They were going to have the display.
04:42:18 5 You would be able to touch the display instead of having to
04:42:24 6 use a mechanical button.

04:42:25 7 The next is a patent, the Joo, published in 2008,
04:42:30 8 cover for a mobile device and a mobile device having the
04:42:33 9 same. And, again, you have a display, a base cover or a
04:42:39 10 substrate, and a touch portion that is on the top of the
04:42:43 11 display, goes around the edge and down the side. And,
04:42:47 12 again, had a virtual button, a button you could press on
04:42:51 13 the display rather than a mechanical button.

04:42:53 14 Now, I want -- I do want to talk briefly about the
04:43:01 15 value of these patents.

04:43:04 16 You heard about the hypothetical negotiation that
04:43:07 17 the experts will talk about. For the '450 and the '338
04:43:14 18 patents, the hypothetical negotiation would take place in
04:43:17 19 2013. I want to show you what the evidence is going to
04:43:24 20 show about the relationship between Casio and Samsung at
04:43:26 21 that very time.

04:43:27 22 2008, Casio sold eight display patents to Samsung
04:43:36 23 Electronics for 12 and a half million.

04:43:38 24 2012, Casio sold 85 patents to Samsung for 1.35
04:43:44 25 million.

04:43:44 1 2012 again, Casio licensed 169 display patents and
04:43:52 2 applications to Samsung Display for 2.1 million.

04:43:57 3 And in 2013, both companies cross-licensed their
04:44:03 4 patents, and the hypothetical negotiation was 2013.

04:44:08 5 Samsung's displays were on the market at this
04:44:13 6 point in time. If Casio, the owner of these patents,
04:44:18 7 knowing and licensing Samsung at the very time of the
04:44:24 8 hypothetical negotiation, had they thought these patents
04:44:30 9 were worth \$60 million, don't you think they would have put
04:44:33 10 them on the table at this point in time and asked for that
04:44:36 11 \$60 million?

04:44:40 12 But Casio knew those patents weren't valuable.
04:44:44 13 They weren't being used. Casio had never made any OLED
04:44:50 14 displays with those patents.

04:44:51 15 Similarly, so they sold the 724 patents and patent
04:44:57 16 applications for 1.15 million, for about \$16,000.00 a
04:45:03 17 patent.

04:45:04 18 Similar situation with Atmel. Atmel had been
04:45:08 19 bought by a company called Microchip. Microchip decided to
04:45:14 20 sell a bunch of patents, and it hired brokers and experts
04:45:23 21 to value, the portfolio they were trying to sell. They
04:45:25 22 went around to more than 50 companies, including Samsung,
04:45:28 23 to try to sell that portfolio.

04:45:30 24 And on the right-hand side of this slide, you'll
04:45:32 25 see some of the reason -- some of the feedback that

04:45:37 1 Microchip got when they were trying to sell these patents.
04:45:42 2 Risk of technology obsolescence as a reason to pass or
04:45:49 3 reduce bids, obsolescence.

04:45:52 4 Ease of design around. You don't need to use them
04:45:55 5 if you can come up with other ways to do it.

04:45:58 6 High cost of maintenance, and the overall value
04:46:00 7 was pegged at 2.4 out of 5. So Microchip ultimately sold
04:46:07 8 500,000 patents to Solas -- sold 12 patents for
04:46:11 9 \$500,000.00, which is about \$41,000.00 per patent.

04:46:18 10 So at the end of the day, I'm going to ask you to
04:46:22 11 reward Samsung for its innovation, for the fact that we all
04:46:26 12 have, as even Plaintiff's counsel said, the bright, vivid,
04:46:32 13 great contrast, energy-saving OLED displays we have.

04:46:36 14 THE COURT: Your time is expired, counsel. Take a
04:46:39 15 few seconds and wrap up.

04:46:41 16 MR. HASLAM: I'm going to ask you at the end of
04:46:43 17 the case not for a monetary award, but to reward the
04:46:49 18 innovation of Samsung with a finding of non-infringement.

04:46:54 19 Thank you.

04:46:55 20 THE COURT: All right. Is Plaintiff prepared to
04:47:00 21 go forward with its case-in-chief?

04:47:02 22 MS. FAIR: Yes, Your Honor.

04:47:03 23 THE COURT: Call your first witness.

04:47:05 24 MS. FAIR: Your Honor, Solas calls Mr. Gerry
04:47:09 25 Padian.

04:47:09 1 THE COURT: All right. You'll come forward,
04:47:11 2 Mr. Padian, and be sworn. Our courtroom deputy will swear
04:47:16 3 you in right here.

04:47:17 4 (Witness sworn.)

04:47:25 5 THE COURT: Thank you, sir. Please come around,
04:47:28 6 and have a seat here at the witness stand.

04:47:36 7 There's water there if you'd like it. Once you're
04:47:40 8 situated, please take off your mask, and situate the
04:47:43 9 microphone so you can be heard.

04:47:46 10 All right. Ms. Fair, you may proceed with your
04:47:50 11 direct examination.

04:47:51 12 MS. FAIR: Thank you, Your Honor.

04:47:51 13 GERRY PADIAN, PLAINTIFF'S WITNESS, SWORN

04:47:51 14 DIRECT EXAMINATION

04:47:52 15 BY MS. FAIR:

04:47:52 16 Q. Mr. Padian, would you introduce yourself, please?

04:47:58 17 A. Yes, my name is Gerry Padian. I'm a co-founder of
04:48:02 18 Solas OLED. And I am a director on the board of directors
04:48:07 19 of Solas OLED.

04:48:08 20 Q. What do you do as a director of Solas OLED?

04:48:10 21 A. We -- I plan the strategy of the company. I assist in
04:48:16 22 the licensing and generally oversee the management of the
04:48:18 23 company.

04:48:19 24 Q. I want to talk about Solas OLED's business in just a
04:48:22 25 minute. But could you tell us a little bit about yourself

04:48:26 1 first?

04:48:26 2 A. Yes. I'm married for 24 years. My wife is Patricia.

04:48:31 3 We live in Katonah, New York -- it's about an hour north of

04:48:35 4 New York City -- with our kids and my in-laws. I have two

04:48:38 5 children, Luke and Katherine, both are in college. My son,

04:48:42 6 Luke, just started freshman year. My daughter is about to

04:48:46 7 graduate.

04:48:46 8 Q. So could you tell the jury what is Solas OLED? What

04:48:50 9 type of business is it?

04:48:51 10 A. Solas OLED is a display technology company. It has

04:48:55 11 purchased patents in the display area, primarily OLED

04:49:00 12 technology and touch sensor technology.

04:49:03 13 Solas OLED seeks to license those patents, and

04:49:07 14 that's how it generates its revenue.

04:49:09 15 THE COURT: Let me interrupt you just a minute,

04:49:11 16 counsel.

04:49:11 17 Does either party wish to invoke the Rule?

04:49:18 18 MR. LERNER: We do, Your Honor.

04:49:20 19 THE COURT: All right. Defendants wish to invoke

04:49:22 20 the Rule.

04:49:22 21 Am I correct in assuming that that would apply to

04:49:26 22 fact witnesses but exclude expert witnesses?

04:49:32 23 MR. HASLAM: Your Honor, I'm going to take the

04:49:34 24 prerogative of being old and senile and overrule my

04:49:38 25 partner, and we're not going to invoke the Rule. I

04:49:42 1 apologize.

04:49:42 2 THE COURT: All right. Defendants have changed
04:49:44 3 their position.

04:49:44 4 Do Plaintiffs wish to invoke the Rule?

04:49:48 5 MR. FENSTER: Yes, Your Honor. I apologize for
04:49:57 6 that. Yes, we would like to invoke the Rule, Your Honor.

04:50:00 7 THE COURT: And am I right, Mr. Fenster, that you
04:50:02 8 would propose it be invoked to exclude experts and to
04:50:07 9 include fact witnesses?

04:50:09 10 MR. FENSTER: That's correct, Your Honor.

04:50:10 11 THE COURT: All right. Either party has the right
04:50:12 12 to invoke the Rule, ladies and gentlemen. The Rule
04:50:15 13 requires that if you are a witness in this case, that you
04:50:18 14 be excluded from the courtroom until you are called into
04:50:22 15 the courtroom to testify.

04:50:24 16 The exceptions in this case will be witnesses
04:50:26 17 designated as experts, who will be permitted to stay in the
04:50:30 18 courtroom and hear the testimony of the other witnesses.
04:50:33 19 It also excludes the designated representatives of the
04:50:38 20 corporate parties to the case.

04:50:39 21 So corporate representatives and expert witnesses
04:50:42 22 are excluded. All other witnesses, particularly fact
04:50:46 23 witnesses, are subject to the Rule. And if you are such a
04:50:49 24 fact witness intended as a witness in this case, you should
04:50:53 25 excuse yourselves and remain outside the courtroom until

04:50:55 1 such time as you're called to testify.

04:50:57 2 The Rule is invoked.

04:50:59 3 Ms. Fair, my apologies for not taking that up
04:51:02 4 earlier. Please continue with your direct examination.

04:51:04 5 MS. FAIR: Thank you, Your Honor.

04:51:06 6 Q. (By Ms. Fair) Mr. Padian, you told us that Solas
04:51:09 7 OLED's business, you own a patent portfolio, and you seek
04:51:12 8 to license it. As a company with this technology, do you
04:51:18 9 have a technical background?

04:51:19 10 A. I do not. I have a degree in economics and a law
04:51:23 11 degree.

04:51:23 12 Q. How is it that you got into a business that owns
04:51:26 13 technology?

04:51:26 14 A. I was representing a friend of mine from college, and
04:51:31 15 he had a satellite company. We represented him in the sale
04:51:35 16 of that company. After he had sold the company, he was
04:51:38 17 looking to start up a new company. He had this idea to
04:51:41 18 apply what he'd learned in the satellite industry to what
04:51:46 19 was then becoming the Internet, the boom of the Internet,
04:51:49 20 1997. And we decided to invest with him, and that's how I
04:51:52 21 got involved with technology for the first time.

04:51:54 22 Q. What was the business plan of this venture with your
04:51:57 23 friend from college?

04:51:58 24 A. So Jay was a genius. He was always the smartest --
04:52:02 25 Mr. Fallon was always the smartest person that I knew going

04:52:06 1 to college. He had invented a way of compressing and
04:52:09 2 decompressing data on the fly so that it would speed up the
04:52:13 3 delivery of data over the Internet and -- and -- and the
04:52:19 4 capacity of the pipeline over the Internet.

04:52:21 5 This is what he learned from the satellite
04:52:23 6 business where you have a transponder and you're increasing
04:52:26 7 the bandwidth to a satellite, he applied that technology
04:52:29 8 and those ideas to the Internet.

04:52:32 9 So we developed products, hardware products,
04:52:35 10 software products, and fortunately also applied for patents
04:52:38 11 on those inventions.

04:52:39 12 Q. What did you plan to do with the products that you had
04:52:42 13 made?

04:52:42 14 A. We initially went out to -- with the products and
04:52:47 15 demonstrated them to larger companies, some of the largest
04:52:50 16 technology companies in the world. We showed them the
04:52:52 17 products, we showed them the concepts, the inventions, the
04:52:55 18 software. And our hope was to partner with one of these
04:52:58 19 companies so that they would be able to do the
04:53:00 20 manufacturing, and we would be able to provide them with
04:53:03 21 the patent cover and the ideas.

04:53:06 22 Q. Did it work out?

04:53:07 23 A. Not that part of the business, no, it did not.

04:53:09 24 Q. So where did you go from there?

04:53:11 25 A. We found that many of the companies we had demonstrated

04:53:15 1 and shown the products to a few years later were actually
04:53:18 2 utilizing them without ever contacting us, so much as even
04:53:23 3 a phone call.

04:53:24 4 As I said before, fortunately we had patents that
04:53:26 5 had issued at that time. The patents were taking a while
04:53:30 6 to issue, about five years. But when they issued, we
04:53:34 7 pivoted and we changed our business to essentially go out
04:53:37 8 and license -- essentially attempt to get those companies
04:53:39 9 using our technology to pay for it.

04:53:41 10 Q. What did you learn from negotiating with these
04:53:43 11 companies when you were seeking to license patents?

04:53:45 12 A. We were six guys in a room, and they were very large
04:53:50 13 corporations, and what we realized was it's not that
04:53:53 14 simple. You can't just send a letter or give them a call
04:53:55 15 and say, hey, this is what you're using, here's our patent,
04:53:59 16 and pay. You have the door closed in your face. They will
04:54:03 17 not pay you by simply going to them. Unless you're an
04:54:06 18 equally large company or you bring them to a place like
04:54:10 19 this, a court of law, and they're told that they have to
04:54:12 20 pay.

04:54:13 21 Q. Were you able to negotiate licenses and execute
04:54:15 22 licenses?

04:54:16 23 A. We were. Took a long time and it took a lot of time
04:54:23 24 money and effort, but we were able to do that and we were
04:54:26 25 able to obtain licenses, pay back our investors, people

04:54:30 1 that stood by us all those years.

04:54:30 2 Q. Is this a new business model to own patents and
04:54:33 3 negotiate licenses and not actually make a product?

04:54:35 4 A. No. It goes back to really the founding of the patent
04:54:39 5 system, the Constitution. Thomas Edison was one of the
04:54:42 6 biggest inventors, as we all know, but made most of his
04:54:46 7 money by simply licensing his inventions, not selling the
04:54:50 8 products. So it's as old as the system itself. It's a
04:54:54 9 very, very important part of the system because it creates
04:54:57 10 a market for inventions.

04:54:58 11 So if you're not fortunate enough to be able to
04:55:00 12 make the product or simply don't want to make the product,
04:55:02 13 perhaps you're an idea person and you're not a
04:55:05 14 manufacturer, this gives you the market to benefit and
04:55:08 15 receive money for it so you can continue to monetize -- you
04:55:12 16 can continue to invent and innovate.

04:55:15 17 Q. How is it that you became a director of Solas OLED?

04:55:19 18 A. Well, we were still -- the company that we had found
04:55:22 19 with my friend from college was called Realtime Data. We
04:55:23 20 were working at Realtime Data, and we started to get notice
04:55:26 21 from a lot of other companies, some operating companies who
04:55:29 22 had great inventions but weren't necessarily producing them
04:55:33 23 that wanted to sell their patents, some brokers who deal in
04:55:37 24 that market, as I said before. And we were being
04:55:39 25 approached by a lot of people to do the same with their

04:55:42 1 patents as we were doing with ours.

04:55:44 2 Q. Was there a particular set of patents that piqued your
04:55:49 3 interest?

04:55:49 4 A. Yes. We receive hundreds of patents every year, and
04:55:53 5 when we saw the Casio patent portfolio, I had not heard of
04:55:57 6 OLED at that time, it was 2016, but one of my business
04:55:59 7 partners had. And he had been following it very closely.
04:56:02 8 He had previously been in the display industry, and he was
04:56:05 9 very excited and said we should look at it.

04:56:07 10 Q. Was that enough? You have a business partner who says:
04:56:10 11 I love these patents. Let's go buy them. Is that the next
04:56:13 12 step?

04:56:13 13 A. No, not at all.

04:56:14 14 Q. What do you do from there?

04:56:16 15 A. We had to spend a lot of time, money, and effort to
04:56:20 16 investigate the patents. We wanted to see, number one,
04:56:23 17 were the patents valid? Were they -- did they encompass a
04:56:28 18 unique idea? Were they truly inventive? Were they used in
04:56:33 19 the marketplace? There's a lot that you have to do to --
04:56:36 20 you have to decide how big the marketplace is. Is it
04:56:40 21 worthwhile while buying and spending the million of dollars
04:56:42 22 it takes to monetize it, to license it.

04:56:44 23 So we looked at the patents. We hired expert
04:56:48 24 patent counsel. We hired OLED experts. And we just spent
04:56:52 25 a lot of time looking over the patents to prove those

04:56:54 1 things that they were valid, they were infringed.

04:56:57 2 Q. And this is all before you bought the patents?

04:57:00 3 A. Correct.

04:57:00 4 Q. So you invest the time and energy looking at the
04:57:04 5 patents. I guess you ultimately decided to buy them?

04:57:07 6 A. We did.

04:57:08 7 MS. FAIR: Can we pull up, please, Mr. Wietholter,
04:57:12 8 PTX-550?

04:57:16 9 Q. (By Ms. Fair) What are we looking at, Mr. Padian?

04:57:22 10 A. This is the patent purchase agreement dated April
04:57:27 11 16th -- I'm sorry, dated April 11th, 2016, between Casio
04:57:31 12 and Solas OLED, our company.

04:57:33 13 Q. And we heard earlier today about what type of business
04:57:37 14 Casio was. In your -- in your looking into this patent
04:57:42 15 portfolio, what did you learn about Casio in the OLED
04:57:44 16 space?

04:57:44 17 A. Casio was actually an early innovator in the OLED
04:57:50 18 space. They had looked at it. They were -- you had the
04:57:54 19 Casio watches. You also had the Casio cameras, the small
04:57:58 20 Casio cameras. And they were looking to put OLEDs on those
04:58:01 21 cameras.

04:58:01 22 So they were very early on looking at the
04:58:04 23 possibility of OLEDs. They had a lot of smart engineers,
04:58:08 24 and they focused their engineers into developing OLED
04:58:11 25 technology, which they did successfully.

04:58:13 1 Q. So do you think because Casio doesn't actually make
04:58:18 2 displays today, their inventions must not be worth
04:58:20 3 anything?

04:58:21 4 A. Not at all. Kodak, which is really another very large
04:58:27 5 pioneer in the OLED space, doesn't currently make OLEDs,
04:58:30 6 and yet they're highly regarded as one of the innovators.
04:58:35 7 Casio, another camera company, was the same --

04:58:38 8 THE COURT: Wait a minute. Mr. Padian, nobody
04:58:40 9 asked you about Kodak. You need to limit your answers to
04:58:44 10 the questions asked. Ms. Fair is perfectly capable of
04:58:48 11 asking you anything she wants you to talk about. But the
04:58:50 12 fact that you talk about Casio cameras doesn't open the
04:58:53 13 door to talking about Kodak or Nikon or any other camera
04:58:57 14 manufacturer. Try to limit your answers to the questions
04:59:00 15 asked, sir.

04:59:00 16 THE WITNESS: Yes, sir.

04:59:01 17 THE COURT: Let's continue.

04:59:03 18 MS. FAIR: Mr. Wietholter, if we go to Page 2,
04:59:06 19 Paragraph 2.

04:59:07 20 Q. (By Ms. Fair) What was the purchase price for your
04:59:10 21 portfolio that you bought from Casio?

04:59:11 22 A. \$1,150,000.00.

04:59:14 23 Q. And what did you get for that?

04:59:16 24 A. We got the patent portfolio of 725 patents and patent
04:59:22 25 applications. It was several patent applications.

04:59:24 1 Q. Does it make a difference if some of what's in the mix
04:59:28 2 of what you buy are patents versus patent applications?

04:59:31 3 A. Yes.

04:59:31 4 Q. Why is that?

04:59:32 5 A. Patent applications are applications to the Patent
04:59:34 6 Office that have not yet been issued. So you're taking the
04:59:38 7 risk that they may never be issued.

04:59:40 8 Q. When you're looking at a portfolio like this and you've
04:59:43 9 done all of the work on the front end before you buy the
04:59:46 10 patents, can you know for sure that you're getting a lot of
04:59:49 11 value in the portfolio? You know you've got a good deal
04:59:52 12 here?

04:59:53 13 A. No.

04:59:53 14 Q. Why not?

04:59:53 15 A. You don't know really until you begin to look at the
04:59:57 16 products in the marketplace whether or not they're using
05:00:00 17 the patents that you just purchased.

05:00:01 18 Q. Why can't you know that until you go look further into
05:00:05 19 it?

05:00:05 20 A. Because it takes millions of dollars to actually do
05:00:09 21 that. You need to buy the products. You need to tear them
05:00:13 22 down. You need to determine whether or not what's inside
05:00:15 23 those products is actually what is represented in your
05:00:19 24 patents. It's a high risk/high reward business.

05:00:24 25 Q. And so did you do that after you bought this portfolio?

05:00:27 1 A. We did.

05:00:27 2 Q. What -- tell us who you engaged, what you did to look
05:00:30 3 into these patents.

05:00:31 4 A. So we built a business around these patents. We hired
05:00:35 5 really smart engineers. We set up in Ireland where I knew
05:00:41 6 a lot of really good engineers, particularly in this space.

05:00:46 7 And we also went out and hired labs. There's a
05:00:47 8 few labs in the world that were particularly good at doing
05:00:50 9 this. We hired two of them. One was in Ireland, and one
05:00:52 10 was in the Ukraine.

05:00:55 11 Q. And what do those labs do?

05:00:58 12 A. So using the one in Ireland, a lab called Tyndall, they
05:01:02 13 take the phone -- in this case Samsung phone -- and they
05:01:06 14 de-layer it. They take it apart layer by layer and look at
05:01:09 15 each layer with microscopes and analyze the circuitry of
05:01:13 16 those -- of those -- of the phone and compare it
05:01:19 17 claim-by-claim to your patent, and it has to match.

05:01:21 18 Q. So is use of an invention, like some of what we're
05:01:24 19 talking about in this case, something that's readily
05:01:26 20 apparent when you just -- you know, you got a smart
05:01:29 21 engineer can look at the device and see it?

05:01:31 22 A. Absolutely not.

05:01:32 23 Q. Is the 1.15 million that you paid for these patents, is
05:01:37 24 that the true price that it takes when you're investing in
05:01:40 25 something like this?

05:01:41 1 A. No, ma'am.

05:01:42 2 Q. How much more goes into it?

05:01:43 3 A. Even before we bought it, we had spent hundreds of
05:01:47 4 thousands of dollars just looking at the patents. And as I
05:01:50 5 just mentioned before, after we purchased it, we literally
05:01:53 6 spent million of dollars tearing down the products and
05:01:56 7 looking and analyzing the products to see if, in fact, they
05:01:59 8 did infringe. So the real price was millions.

05:02:02 9 Q. Did anyone else look at these patents?

05:02:04 10 A. Yes.

05:02:04 11 Q. Who?

05:02:05 12 A. We never learned the names, but we knew there were
05:02:09 13 other competitors who were bidding to purchase these
05:02:13 14 patents.

05:02:14 15 Q. What about after you bought them? Was there anyone
05:02:16 16 else who looked at them then?

05:02:19 17 A. Yes.

05:02:20 18 Q. Who was that?

05:02:20 19 A. We had investors that came in -- sophisticated
05:02:24 20 investors who looked at the patents to invest with us.

05:02:27 21 Q. Are all 700 patents and patent applications -- 725, I
05:02:33 22 think, it was you said?

05:02:35 23 A. Yes.

05:02:35 24 Q. Are they all worth the same amount?

05:02:38 25 A. No.

05:02:38 1 Q. Can you tell us what do you expect when you buy a
05:02:44 2 portfolio of this size to find in it in terms of where the
05:02:49 3 value lies?

05:02:50 4 A. It's difficult. When you first get it, you're
05:02:54 5 presented here with a few patents they showed us out of the
05:02:56 6 725 that they thought had the value. And we had to look at
05:03:00 7 725 patents. Generally, it's less than 10 percent of those
05:03:03 8 patents that you'll find that hold the true value of what
05:03:06 9 you own.

05:03:07 10 Q. When you did all of this technical analysis, you really
05:03:10 11 looked into it, spent -- by the way, how long did you spend
05:03:13 12 looking at the patents before you bought them?

05:03:15 13 A. Months. We started looking at this in 2015, and we
05:03:18 14 purchased it in April of 2016.

05:03:22 15 Q. And how long did you spend looking into potential use
05:03:26 16 of this portfolio after you bought it?

05:03:28 17 A. Years.

05:03:29 18 Q. After all of this work, spent the money, spent the
05:03:35 19 time, spent the energy, what was the ultimate conclusion?

05:03:39 20 A. We were very happy with what we found. We were -- it
05:03:44 21 exceeded our expectations. There was far more infringement
05:03:48 22 and far more use of these patented technologies than we had
05:03:51 23 ever hoped when we first bought the portfolio.

05:03:54 24 Q. Why would a company like Casio, a sophisticated
05:04:00 25 electronics company, you said innovator in the OLED space,

05:04:02 1 why would they sell a portfolio like this of \$1.15 million
05:04:09 2 if there's tens of millions of dollars of revenue out there
05:04:14 3 for the use of these patents?

05:04:16 4 A. We don't believe they knew what they had. They had --
05:04:20 5 since the time they sold it to us, they had left the OLED
05:04:25 6 marketplace, and they really didn't know what they had.

05:04:27 7 And at the point they left the marketplace, that
05:04:29 8 patent portfolio went from being an asset to a liability
05:04:32 9 because it's carried then on their books. They have to pay
05:04:35 10 several hundred thousand dollars a year in just maintenance
05:04:39 11 fees, paying all the different Patent Offices around the
05:04:41 12 world to maintain the patent.

05:04:43 13 So they then took a liability off their books. We
05:04:47 14 bought it for \$1,150,000.00. We don't believe they ever
05:04:51 15 really knew the amount of infringement that was out there.

05:04:54 16 And, in addition, it's not what they do. Casio
05:04:57 17 manufactures products. We do this. We find the value in
05:05:01 18 the patents. We go out and find where that's being
05:05:04 19 utilized in the marketplace. Our engineers are
05:05:07 20 specifically skilled at doing that. That's not Casio's
05:05:11 21 business.

05:05:11 22 Q. Did Casio have the confidential information that
05:05:16 23 Samsung has produced in this lawsuit?

05:05:19 24 MR. LERNER: Objection, Your Honor. Calls for
05:05:21 25 speculation.

05:05:23 1 THE COURT: Unless he has personal knowledge of
05:05:24 2 what Casio had, I'll sustain that.

05:05:29 3 Q. (By Ms. Fair) Is the confidential information that
05:05:30 4 Casio produced in this lawsuit publicly available, that
05:05:33 5 anybody can go find it and know?

05:05:35 6 A. No. We certainly couldn't find it.

05:05:37 7 Q. What about the detailed financial sales information of
05:05:41 8 Samsung's products that's been produced in this lawsuit, is
05:05:44 9 that just out there for anyone who wants to know about it?

05:05:47 10 A. No.

05:05:47 11 Q. So can you really know about the true extent of the use
05:05:50 12 of the technology?

05:05:52 13 A. No. It's not available.

05:05:55 14 Q. So we've heard that two of the patents in this lawsuit
05:06:03 15 come from the Casio portfolio. There's a third one, the
05:06:07 16 touch sensor patent, the '311. How did Solas come to own
05:06:11 17 the '311 patent?

05:06:11 18 A. The '311 patent was part of a group of patents, about
05:06:16 19 12 patents, that a company called Microchip was selling.
05:06:20 20 We saw it, and we thought that those particular patents
05:06:26 21 were uniquely compatible to what we had already at Solas
05:06:32 22 with the Casio patent.

05:06:32 23 Q. And how did you find out about Microchip selling these
05:06:35 24 patents?

05:06:35 25 A. A broker from a company called Houlihan Lokey, Pallavi

05:06:41 1 Shah, she contacted us.

05:06:42 2 Q. Why are the brokers that are trying to sell these
05:06:45 3 patents, the Casio portfolio, you said hundreds of others
05:06:46 4 had approached you, the Microchip portfolio, why are these
05:06:48 5 brokers approaching you and your business partners?

05:06:52 6 A. We have been able to successfully find infringement and
05:06:55 7 to monetize it, to get licenses from those who infringe.
05:06:59 8 So it takes their clients, which would be in this case,
05:07:03 9 Microchip, can generate money for their inventions.

05:07:07 10 Q. Did you, when you were looking at the Microchip
05:07:11 11 portfolio, look at the patents before you bought them, like
05:07:13 12 had you done with Casio?

05:07:14 13 A. Yes.

05:07:14 14 Q. And did you have others who looked at the patents, as
05:07:19 15 well, when you were considering purchasing them?

05:07:21 16 A. We did.

05:07:22 17 Q. Who was that?

05:07:22 18 A. Again, we hired experts, patent experts, and also
05:07:27 19 experts in this particular technology to look at it. We
05:07:30 20 also hired financial experts, experts to examine the
05:07:33 21 market, the size of the market, and what we thought we
05:07:36 22 could recover based on -- for this investment.

05:07:38 23 Q. What about your investors?

05:07:40 24 A. And we also had the same group of investors came in and
05:07:44 25 looked at it. And when they did, they hired their own

05:07:48 1 experts and their own attorneys to look at it completely
05:07:51 2 independent from us.

05:07:52 3 MS. FAIR: Mr. Wietholter, could we have PTX-549,
05:07:58 4 please?

05:07:58 5 Q. (By Ms. Fair) If we look at the first paragraph here,
05:08:00 6 Mr. Padian, can you tell us what we're looking at?

05:08:02 7 A. This is the patent and sale -- sorry, patent sale and
05:08:06 8 assignment agreement between Microchip and Solas OLED.

05:08:11 9 MS. FAIR: And, Mr. Wietholter, could we go to
05:08:14 10 Page 7, please, Paragraph 5.1?

05:08:22 11 Q. (By Ms. Fair) What was the purchase price of the
05:08:24 12 portfolio you bought from Microchip?

05:08:25 13 A. \$500,000.00.

05:08:26 14 Q. And what did you get for that?

05:08:28 15 A. 12 patents, and I believe there were a couple of
05:08:30 16 applications for this, as well.

05:08:32 17 Q. When you spend 1.15 million for the purchase price of
05:08:37 18 Casio, 500,000 for the purchase price of the Microchip
05:08:40 19 portfolio, is that all you expect the portfolio to generate
05:08:45 20 in licensing revenue?

05:08:46 21 A. No, ma'am.

05:08:46 22 Q. What are your expectations?

05:08:49 23 A. We're expecting -- we're entrusted with our investors'
05:08:53 24 money. We're expected to make a return on that money. So
05:08:56 25 what we're trying to do is we're trying to get a return to

05:08:58 1 find who's using it and to be compensated fairly for that
05:09:01 2 use, plus certainly an amount far in excess of what we pay
05:09:04 3 for the patents and what we invest to determine the
05:09:07 4 infringement.

05:09:08 5 Q. You pay \$500,000.00 for a portfolio -- by the way, did
05:09:14 6 you tell us how much -- how many patents and patent
05:09:17 7 applications you got for this?

05:09:18 8 A. 12.

05:09:19 9 Q. Pay \$500,000.00 for 12 patents, patent applications.
05:09:23 10 You're here seeking just for the '311 over \$35 million from
05:09:27 11 Samsung; is that fair?

05:09:29 12 A. Yes, it all comes back to usage. If -- if Samsung is
05:09:34 13 using it, to the extent that they are, then they pay
05:09:38 14 according to usage. They don't pay according to what you
05:09:41 15 bought the patent for or what it cost you to invent the
05:09:46 16 product. They pay you based on usage.

05:09:48 17 Q. Has Solas been able to license its portfolio yet?

05:09:52 18 A. Yes.

05:09:52 19 Q. When did you get your first license?

05:09:55 20 A. September of last year.

05:09:57 21 MS. FAIR: And, Your Honor, at this time, we're
05:09:58 22 going to have to go into some license agreements, and so
05:10:01 23 I'd asked if we could seal the courtroom, please.

05:10:04 24 THE COURT: All right. Based on, counsel's
05:10:07 25 request, I'll order the courtroom sealed. Those present

05:10:10 1 not subject to the protective order in this case should
05:10:12 2 excuse themselves and remain outside the courtroom until
05:10:14 3 the courtroom is reopened and unsealed.

05:10:25 4 THE COURT: Let's use the backdoor in the
05:10:31 5 courtroom, not the side door, please.

05:10:33 6 (Courtroom sealed.)

05:10:33 7 (This portion of the transcript is sealed
05:10:33 8 and filed under separate cover as

05:10:42 9 Sealed Portion No. 1.)

05:19:37 10 (Courtroom unsealed.)

05:20:08 11 THE COURT: All right. For the record, the
05:20:10 12 courtroom is unsealed.

05:20:11 13 Counsel, you may proceed with cross-examination.

05:20:13 14 MR. LERNER: Thank you, Your Honor.

05:20:13 15 CROSS-EXAMINATION

05:20:13 16 BY MR. LERNER:

05:20:19 17 Q. Good afternoon, Mr. Padian.

05:20:20 18 A. Good afternoon.

05:20:21 19 Q. My name is Jeff Lerner, counsel for Samsung Display and
05:20:24 20 Samsung Electronics. I want to talk to you about what
05:20:25 21 Solas is and what it isn't. You said, if I got it down
05:20:28 22 right, that Solas is -- if -- is a display technology
05:20:31 23 company; is that right?

05:20:32 24 A. We own display technologies.

05:20:34 25 Q. Did you say, sir, that Solas is a display technology

05:20:37 1 company?

05:20:38 2 A. I -- well, Solas is -- I don't recall, sir. I -- Solas
05:20:42 3 owns display technologies. It is a licensor of display
05:20:45 4 technologies.

05:20:46 5 Q. Okay. And you talked about Thomas Edison. Do you
05:20:49 6 recall that?

05:20:50 7 A. Yes, sir.

05:20:50 8 Q. Thomas Edison invented the light bulb?

05:20:53 9 A. He did.

05:20:54 10 Q. Solas hasn't invented any of its own technology that's
05:20:57 11 patented?

05:20:57 12 A. It has not.

05:20:58 13 Q. Solas didn't develop any of the technology at issue in
05:21:01 14 this case; is that correct?

05:21:02 15 A. That's correct.

05:21:03 16 Q. Solas has never made an Organic Light-Emitting Diode
05:21:09 17 display?

05:21:09 18 A. No, sir.

05:21:10 19 Q. Solas has never made any display at all, correct?

05:21:12 20 A. No.

05:21:13 21 Q. Solas has never made a touch sensor?

05:21:15 22 A. No.

05:21:15 23 Q. Solas has never manufactured any products?

05:21:18 24 A. Correct.

05:21:19 25 Q. Solas has never made any prototypes?

05:21:22 1 A. Correct.

05:21:22 2 Q. You're an investor in Solas, correct?

05:21:24 3 A. I am.

05:21:25 4 Q. And, actually, you have a personal financial stake in
05:21:29 5 the outcome of this case; is that correct?

05:21:30 6 A. As an investor, I do.

05:21:31 7 Q. You're not an employee of Solas?

05:21:34 8 A. No.

05:21:34 9 Q. In fact, Solas has no employees, correct?

05:21:37 10 A. I don't believe that is correct.

05:21:38 11 Q. Solas doesn't have any employees on its payroll,
05:21:42 12 correct?

05:21:42 13 A. There may be one or two, but, primarily, the employees
05:21:46 14 that work for Solas work for a different company, and the
05:21:49 15 services are run through that different company.

05:21:51 16 Q. Do you know Mr. Ciaran O'Gara?

05:21:55 17 A. Yes, sir.

05:21:56 18 Q. And when he was asked during discovery --

05:21:59 19 MS. FAIR: Objection, Your Honor. This is
05:22:01 20 improper impeachment. He's trying to use a statement of
05:22:03 21 another witness against Mr. Padian.

05:22:06 22 MR. LERNER: He's the director of the company,
05:22:09 23 Your Honor.

05:22:09 24 MS. FAIR: It's hearsay.

05:22:11 25 THE COURT: We're not there yet, Ms. Fair. You

05:22:13 1 can reurge your objection if we get there. But we're not
05:22:16 2 at -- I don't see that there's been an attempt to impeach
05:22:19 3 the witness.

05:22:19 4 Go ahead, Mr. Lerner.

05:22:21 5 Q. (By Mr. Lerner) Mr. O'Gara testified when asked: So
05:22:24 6 currently there's no --

05:22:24 7 MS. FAIR: Objection, Your Honor. This is
05:22:27 8 hearsay. It's an out-of-court statement being offered for
05:22:29 9 the truth of the matter asserted. Otherwise, he's trying
05:22:32 10 to impeach him, which is improper.

05:22:34 11 THE COURT: All right. What's your response,
05:22:35 12 Mr. Lerner?

05:22:36 13 MR. LERNER: Your Honor, it's an admission by an
05:22:38 14 officer of the company.

05:22:39 15 MS. FAIR: It's deposition testimony, Your Honor.
05:22:41 16 They can designate it for their case.

05:22:43 17 THE COURT: As -- was this witness designated as a
05:22:49 18 30(b)(6) witness when he was deposed as a 30(b)(6) witness
05:22:53 19 of the Plaintiff?

05:22:57 20 MR. LERNER: He was not.

05:22:58 21 THE COURT: All right. Then I'll sustain the
05:23:00 22 objection.

05:23:01 23 Let's move along.

05:23:02 24 Q. (By Mr. Lerner) Now, Mr. Padian, you mentioned you're
05:23:06 25 not an engineer?

05:23:07 1 A. No, sir.

05:23:08 2 Q. You're an attorney?

05:23:09 3 A. I am an attorney.

05:23:10 4 Q. And you still practice law at a law firm in New York?

05:23:12 5 A. No, sir.

05:23:13 6 Q. And do you understand there's a law firm, Davidoff

05:23:22 7 Hutcher & Citron that still has your web bio as an attorney

05:23:23 8 at that firm?

05:23:23 9 A. Yes, sir.

05:23:24 10 Q. But you're an attorney there actually?

05:23:26 11 A. No, sir. We merged our firm when I stopped practicing

05:23:29 12 law with that firm, and they maintained my information for

05:23:32 13 my clients that went there.

05:23:34 14 Q. And you've personally never designed any OLED displays

05:23:37 15 or touch sensors?

05:23:38 16 A. No.

05:23:38 17 Q. You don't have any expertise in the patents at issue?

05:23:41 18 A. I have no technical background.

05:23:42 19 Q. You're not offering any opinions on infringement?

05:23:44 20 A. No, sir.

05:23:45 21 Q. You didn't analyze any prior art?

05:23:47 22 A. No. We hired experts for that, sir.

05:23:51 23 Q. And you're not offering opinions on the validity or

05:24:00 24 invalidity of the patents in this case, correct?

05:24:02 25 A. I will not, no.

05:24:03 1 Q. Now, if we can turn to the asserted patents.

05:24:06 2 Can you remind us, I'm not sure we heard it today,
05:24:10 3 who are the named inventors of the '450 and '338 patents?

05:24:12 4 A. The -- there are several different Defendants. So the
05:24:15 5 four -- the '331 and -- sorry, the '311 and the '338 come
05:24:22 6 from Casio. There is Mr. Yamada who is on one of them, and
05:24:29 7 Mr. Shirasaki who is on two of them.

05:24:32 8 Q. Okay.

05:24:32 9 A. There is a Mr. Shaikh who was on the '450. And there
05:24:36 10 were a couple of other inventors, as well, but those are
05:24:40 11 the primary.

05:24:40 12 Q. None of the people who are named as inventors ever
05:24:43 13 worked for Solas, correct?

05:24:44 14 A. They did not, sir.

05:24:45 15 Q. And the '450 patent, that was filed by Casio in 1997?

05:24:49 16 A. I believe that's correct.

05:24:51 17 Q. And it expired in 2017?

05:24:53 18 A. It did.

05:24:54 19 Q. That's more than three years ago?

05:24:56 20 A. Yes, sir.

05:24:56 21 Q. Casio is a big company, right?

05:24:58 22 A. Casio is a big company.

05:25:00 23 Q. In Japan?

05:25:01 24 A. Yes.

05:25:01 25 Q. Has a lot of engineers?

05:25:02 1 A. It does.

05:25:03 2 Q. Lot of resources?

05:25:05 3 A. I assume.

05:25:06 4 Q. And they make good products, right?

05:25:09 5 A. I believe so.

05:25:09 6 Q. So from 1997 to 2016, Casio had the '450 patent,

05:25:16 7 correct? For 19 years?

05:25:17 8 A. Until -- I'm sorry, I didn't hear, what's the second
05:25:20 9 date?

05:25:20 10 Q. From 1997 until 2016, Casio had the '450 patent?

05:25:24 11 A. Correct.

05:25:25 12 Q. 19 years?

05:25:26 13 A. Yes.

05:25:26 14 Q. It's a long time in the electronics industry, isn't it?

05:25:29 15 A. I don't have an opinion one way or the other.

05:25:33 16 Q. And in all those years, 19 years Casio had the '450
05:25:38 17 patent, Casio never offered OLED display technology using
05:25:42 18 the technology described in that patent, correct?

05:25:44 19 A. I don't know that. They had formed a joint venture
05:25:50 20 with Toppan in 2012, and I don't know what came out of
05:25:54 21 that.

05:25:54 22 Q. Do you know a Mr. O'Riordan at -- who used to be
05:25:58 23 Solas's chief technology officer?

05:26:01 24 A. He is Solas's -- oh, he is a chief technology officer.

05:26:05 25 Q. He's not an employee of Solas, right?

05:26:07 1 A. Not a direct employee.

05:26:08 2 Q. And you understand he was deposed in this case as a
05:26:12 3 corporate representative of Solas?

05:26:12 4 A. I don't know what capacity, but he was deposed.

05:26:14 5 Q. He was asked: Does Solas contend that Casio ever
05:26:18 6 manufactured or sold any products that practice the
05:26:20 7 invention of the '338 patent?

05:26:22 8 And he answered: We're not aware, no.

05:26:24 9 Is that accurate?

05:26:25 10 A. That's Casio. I was speaking of the joint venture
05:26:29 11 between Toppan and Casio.

05:26:30 12 Q. And he was asked: Is Solas aware of any Casio products
05:26:33 13 that practice the invention of the '450 patent?

05:26:35 14 And he said: No.

05:26:36 15 Is that correct -- is that accurate?

05:26:38 16 A. I assume. I don't have the transcript.

05:26:40 17 Q. Solas isn't aware of Casio ever using the technology of
05:26:43 18 the '450 patent?

05:26:44 19 A. I am not.

05:26:44 20 Q. And you're here as the corporate representative of
05:26:46 21 Solas, correct?

05:26:46 22 A. Yes, sir.

05:26:47 23 Q. And you said that Solas investigated these patents for
05:26:51 24 many months, if not years, before purchasing them?

05:26:53 25 A. We did.

05:26:53 1 Q. The '338 patent was filed for by Casio in 2005; is that
05:27:00 2 right?

05:27:00 3 A. I believe so. I don't have the patent in front of me.

05:27:02 4 Q. And, again, it was sold in 2016?

05:27:05 5 A. Yes, sir.

05:27:06 6 Q. And in all those years, Casio never offered an OLED
05:27:10 7 product using the technology of the '338 patent, correct?

05:27:14 8 A. I don't believe so.

05:27:14 9 Q. Now, you understand that Samsung Galaxy phones with
05:27:19 10 OLED displays were released in the U.S. in 2009, right?

05:27:23 11 A. I believe so.

05:27:24 12 Q. And that was before Solas existed?

05:27:26 13 A. Correct.

05:27:28 14 Q. Casio owned the patents for seven years while Samsung
05:27:33 15 was selling its Galaxy phones with OLED displays, correct?

05:27:36 16 A. Yes.

05:27:39 17 Q. From 2009 to 2016?

05:27:41 18 A. That sounds correct, yes, sir.

05:27:43 19 Q. And Solas was formed in March 2016?

05:27:45 20 A. Yes, sir.

05:27:45 21 Q. And it bought the patents from Casio in April of 2016?

05:27:48 22 A. It did.

05:27:49 23 Q. And you understand that Casio had a patent broker
05:27:52 24 helping to advise it on the marketing and sale of its
05:27:55 25 portfolio of patents?

05:27:56 1 A. It did.

05:27:57 2 Q. And it was selling some 724 patents relating to OLEDs?

05:28:01 3 A. Yes.

05:28:02 4 Q. Patent broker was a company called Quinn Pacific?

05:28:05 5 A. Yes.

05:28:06 6 Q. They're well respected, right?

05:28:08 7 A. They are.

05:28:08 8 Q. You're familiar with them?

05:28:09 9 A. I am.

05:28:10 10 Q. And their job was to help Casio get the best deal they
05:28:13 11 could for that 724 patents, correct?

05:28:16 12 A. Yes.

05:28:16 13 THE COURT: Let's make sure that the question is
05:28:18 14 complete before the answer is given and the answer is given
05:28:20 15 before the next question is asked. You all are crowding
05:28:23 16 each other a little bit, all right?

05:28:25 17 THE WITNESS: Sorry, Your Honor.

05:28:27 18 MR. LERNER: Thank you, Your Honor.

05:28:27 19 THE COURT: Let's continue.

05:28:29 20 Q. (By Mr. Lerner) Patent brokers generally get paid a
05:28:33 21 commission on the sales price, kind of like real estate
05:28:35 22 brokers, correct?

05:28:35 23 A. They do.

05:28:36 24 Q. And there were attorneys for Solas given access to
05:28:38 25 Casio confidential information as part of that process?

05:28:40 1 A. Yes.

05:28:41 2 Q. You had experts helping you out?

05:28:43 3 A. At what point in time?

05:28:47 4 Q. In the valuation of the Casio portfolio?

05:28:48 5 A. Yes.

05:28:49 6 Q. And, in fact, you had Mr. Stephen Dell, who we heard
05:28:51 7 about this morning, your damages expert in this case, he
05:28:55 8 was advising Solas at that time on the value of Casio's
05:28:58 9 patents, correct?

05:28:58 10 A. I'm not sure at what point in time, but he did advise
05:29:03 11 us.

05:29:03 12 Q. You recall that he advised you in connection with the
05:29:07 13 purchase of that portfolio, correct?

05:29:09 14 A. I believe so.

05:29:11 15 Q. Mr. Dell has been advising Solas since all the way back
05:29:15 16 in 2016, correct?

05:29:16 17 A. Yes, sir.

05:29:17 18 Q. And Casio had its expert advisors, too, right?

05:29:22 19 A. I don't know.

05:29:23 20 Q. They had Quinn Pacific?

05:29:25 21 A. They're the broker.

05:29:27 22 Q. And they were working for Casio?

05:29:28 23 A. They were.

05:29:29 24 Q. And Casio with all the information it had, with its own
05:29:33 25 experience in the industry and its technology, it sold the

05:29:36 1 entire set of 724 patents for \$1.15 million?

05:29:41 2 A. Correct.

05:29:41 3 Q. And if you do the math, that's an average of a little
05:29:46 4 under \$1600.00 per patent, correct?

05:29:49 5 A. Yes.

05:29:49 6 Q. Now, in 2013, did you hear that date mentioned in the
05:29:55 7 opening by your counsel?

05:29:56 8 A. I did.

05:29:57 9 Q. Solas didn't exist then, did it?

05:29:59 10 A. It did not.

05:30:00 11 Q. In May 2013, Casio was the owner of the '450 and '338
05:30:05 12 patents?

05:30:05 13 A. Yes.

05:30:06 14 Q. And we know that Casio was willing to not just license
05:30:10 15 but sell those patents with 722 more in 2016 for \$1.15
05:30:19 16 million, correct?

05:30:20 17 A. Correct.

05:30:20 18 Q. Now, in 2018, a company called Microchip was auctioning
05:30:26 19 off a different set of patents, correct?

05:30:28 20 A. Yes, sir.

05:30:29 21 Q. And those related to touch sensors, correct?

05:30:32 22 A. Yes.

05:30:33 23 Q. Microchip is also a big company?

05:30:35 24 A. They are.

05:30:35 25 Q. And they had patent brokers helping them, too?

05:30:38 1 A. Yes, they did.

05:30:39 2 Q. You mentioned Houlihan Lokey, I believe?

05:30:43 3 A. Correct.

05:30:43 4 Q. And Houlihan Lokey went around to try to create
05:30:46 5 interest in this portfolio for Microchip, right?

05:30:48 6 A. I believe so.

05:30:49 7 Q. There was a competitive bidding process in which Solas
05:30:53 8 participated?

05:30:54 9 A. We bid on the patents. I -- we didn't have visibility
05:30:59 10 as to who the other bidders were.

05:31:01 11 Q. Do you know if there were other companies that were
05:31:03 12 interested in purchasing the portfolio?

05:31:05 13 A. We were told there were.

05:31:06 14 Q. And in late December of 2018, Microchip sold Casio --
05:31:12 15 or sold Solas that portfolio of 12 patents for \$500,000.00?

05:31:16 16 A. Correct.

05:31:18 17 Q. And that's -- if you do the math -- under \$42,000.00
05:31:22 18 per patent, correct?

05:31:24 19 A. Correct.

05:31:24 20 Q. And it's five months after buying those patents that
05:31:29 21 Solas is asking for -- Solas filed this lawsuit in which
05:31:35 22 you're asking for more than \$35 million on just one, the
05:31:39 23 '311 patent, correct?

05:31:40 24 A. I believe that's correct.

05:31:42 25 Q. You filed this lawsuit about five months after you

05:31:45 1 bought the patents, right?

05:31:46 2 A. Yeah, I'm not sure of the timing, but I'll take your
05:31:49 3 representation as true.

05:31:50 4 Q. Solas has a website, correct?

05:31:52 5 A. We have a website, sure.

05:31:55 6 MR. LERNER: And, actually, Your Honor, I'm going
05:31:56 7 to talk now about licensing. This may be a good time to
05:32:00 8 seal the courtroom.

05:32:00 9 THE COURT: If you're going to ask questions about
05:32:03 10 licensing, I'll seal the courtroom.

05:32:05 11 MR. LERNER: Thank you, Your Honor.

05:32:06 12 THE COURT: All right. I'll order the courtroom
05:32:07 13 sealed and direct those present not subject to the
05:32:09 14 protective order to excuse themselves and remain outside
05:32:12 15 the courtroom until it's reopened and unsealed.

05:32:16 16 (Courtroom sealed.)

05:32:16 17 (This portion of the transcript is sealed
05:32:16 18 and filed under separate cover as
05:32:20 19 Sealed Portion No. 2.)

05:44:37 20 (Courtroom unsealed.)

05:44:38 21 THE COURT: All right. For the record, the
05:45:02 22 courtroom is unsealed and reopened.

05:45:05 23 Please continue, counsel.

05:45:06 24 MS. FAIR: Thank you, Your Honor.

05:45:08 25 Q. (By Ms. Fair) We talked a little bit earlier -- we

05:45:10 1 heard you talking about some of the licenses that existed
05:45:13 2 to the Casio portfolio before you had it. We saw that
05:45:16 3 Solas was talking about OLED displays, smartphones, you
05:45:21 4 know, other companies and other spaces. Can you tell us
05:45:23 5 some examples of some of those companies?

05:45:26 6 A. Yes. Actually, if you pull up the license agreement --
05:45:31 7 sorry, the sale agreement, it's in the back of the sale
05:45:34 8 agreement. But there were a host of companies, Qualcomm,
05:45:38 9 Microsoft. There were just many, many companies that they
05:45:41 10 had licenses to in all those areas in the phone, in the
05:45:45 11 camera market. Almost every major camera manufacturer was
05:45:49 12 licensed.

05:45:50 13 Q. And so -- I'm sorry, go ahead, Mr. Padian.

05:45:52 14 A. No. There were many, many companies. What we put in
05:45:55 15 the website, we try to be accurate as to the areas in which
05:45:59 16 the portfolio had been licensed. You probably should have
05:46:04 17 been a little bit -- you know, that they were previously
05:46:06 18 licensed or licensed by Casio.

05:46:10 19 Q. What does it tell you that companies like Qualcomm and
05:46:13 20 some of those others who had already licensed the Casio
05:46:17 21 portfolio, what does that tell you about the strength of
05:46:19 22 the portfolio itself, even before it got to your hands?

05:46:22 23 A. It validates the strength of the portfolio. It says
05:46:26 24 that these companies who have also great engineers see the
05:46:31 25 need to take a license and to utilize that technology.

05:46:35 1 Q. I want to talk a little bit about the sale of the Casio
05:46:39 2 portfolio to Solas.

05:46:41 3 We heard some questions about Quinn Pacific, and
05:46:44 4 they were trying to get the best deal for Casio. Do you
05:46:48 5 know whether Quinn Pacific had access to all of the
05:46:53 6 confidential information that Samsung has provided here?

05:46:56 7 A. They did not.

05:46:57 8 Q. Do you know whether Quinn Pacific had spent millions
05:47:01 9 doing teardowns that Solas did?

05:47:02 10 A. They certainly did not.

05:47:04 11 Q. Do you know whether Casio knew of Samsung's use of
05:47:11 12 their technology?

05:47:12 13 A. They did not.

05:47:14 14 MR. LERNER: Objection, Your Honor, calls for
05:47:15 15 speculation.

05:47:17 16 THE COURT: Well, he answered based on his own
05:47:20 17 personal knowledge, and your objection is untimely. It's
05:47:24 18 overruled.

05:47:25 19 Let's continue.

05:47:27 20 Q. (By Ms. Fair) How do you know that Casio didn't know
05:47:28 21 about Samsung's use of their technology?

05:47:30 22 A. Two reasons. The first is they presented no evidence
05:47:34 23 of infringement by Samsung. So when we first looked at it,
05:47:38 24 all this showed was infringement by LG. It was very
05:47:42 25 cursory infringement. We really had to dig.

05:47:44 1 We purchased these patents really not knowing for
05:47:48 2 sure that Samsung had infringed them. We believed, but we
05:47:52 3 didn't really know until we had spent the amount of money
05:47:54 4 we had spent.

05:47:56 5 The second reason is we spoke to one of the
05:47:58 6 inventors. We presented to them what we thought was the
05:48:01 7 Samsung infringement, and he was shocked. He had no idea.

05:48:04 8 Q. When was that?

05:48:05 9 A. That was prior to -- that was just after purchasing the
05:48:08 10 patents, maybe a few months after purchasing the patents.

05:48:12 11 Q. We heard some criticism of Solas business model because
05:48:17 12 you don't make a product?

05:48:18 13 A. Correct.

05:48:23 14 Q. Is this business model of buying patents and then
05:48:28 15 pursuing licensing revenues for those patents, are there
05:48:33 16 other companies that do that?

05:48:34 17 A. Yes.

05:48:35 18 Q. Can you give us an example?

05:48:37 19 A. Samsung. Samsung does the same exact thing. In fact,
05:48:41 20 they have a company called Intellectual Keystone Properties
05:48:48 21 that they funded that goes out and buys patents to seek to
05:48:51 22 license those patents and enforce those patents.

05:48:53 23 Q. So do you think it's fair for Samsung to stand up here
05:48:57 24 and minimize the inventions in this case because Solas
05:49:03 25 doesn't make a product?

05:49:04 1 A. No.

05:49:05 2 MR. LERNER: Objection, Your Honor, argumentative.

05:49:07 3 THE COURT: Calls for an opinion, and it's
05:49:09 4 sustained.

05:49:10 5 Q. (By Ms. Fair) Mr. Padian, does Solas own the property
05:49:14 6 right, do they own the deed to the inventions in this case?

05:49:17 7 A. Yes, we do.

05:49:17 8 Q. Do you own it any less because you don't make a
05:49:21 9 product?

05:49:21 10 A. Absolutely not.

05:49:22 11 MS. FAIR: I'll pass the witness.

05:49:23 12 THE COURT: Additional cross, Mr. Lerner?

05:49:25 13 MR. LERNER: Very briefly, Your Honor.

05:49:30 14 THE COURT: Go ahead.

05:49:34 15 MR. LERNER: Thank you.

05:49:34 16 RECROSS-EXAMINATION

05:49:35 17 BY MR. LERNER:

05:49:35 18 Q. Mr. Padian, you mentioned Casio had licensed some
05:49:39 19 patents in its portfolio?

05:49:40 20 A. Yes, sir.

05:49:40 21 Q. For selling it?

05:49:41 22 A. Yes.

05:49:42 23 Q. And Casio was aware of the value of those patents -- of
05:49:44 24 those licenses?

05:49:45 25 A. I don't -- I can't speculate to what Casio knew.

05:49:50 1 Q. They were licenses that Casio had entered into,
05:49:53 2 correct?

05:49:53 3 A. Correct.

05:49:53 4 Q. So Casio, of course, is aware of those licenses,
05:49:56 5 correct?

05:49:56 6 A. Yes.

05:49:57 7 Q. And with that knowledge and its knowledge of the
05:49:59 8 market, it sold the entire set of 724 patents to Solas for
05:50:04 9 \$1.15 million, correct?

05:50:06 10 A. No, sir.

05:50:07 11 Q. Solas --

05:50:08 12 A. You said knowledge in the market. They didn't have
05:50:11 13 knowledge in the market. Knowledge in the market would
05:50:13 14 have been Samsung's -- the extent of Samsung and LG's
05:50:16 15 infringement. They had no idea of Samsung's infringement.

05:50:19 16 Q. Sir, it's your testimony that Casio did not know the
05:50:22 17 OLED market?

05:50:24 18 A. They did not know the market as it existed that
05:50:28 19 companies such as Samsung, to the extent they were using
05:50:31 20 the technology. No, they did not know.

05:50:33 21 Q. And am I right that you said Casio presented no
05:50:37 22 evidence to you or others that Samsung had infringed?

05:50:37 23 A. That's correct, they had no idea of Samsung's
05:50:42 24 infringement.

05:50:42 25 Q. They had presented no evidence to you that they

05:50:45 1 infringed, that there was any infringement, correct?

05:50:47 2 A. Correct.

05:50:48 3 MR. LERNER: Thank you, Your Honor. That's all I
05:50:51 4 have.

05:50:51 5 THE COURT: All right. Is there redirect --
05:50:53 6 further redirect?

05:50:54 7 MS. FAIR: No, Your Honor.

05:50:55 8 THE COURT: All right. Mr. Padian, you may step
05:50:57 9 down.

05:50:58 10 THE WITNESS: Thank you, Your Honor.

05:50:59 11 THE COURT: Ladies and gentlemen, I'm not going to
05:51:12 12 have the Plaintiffs call their next witness. It's almost
05:51:15 13 6:00 o'clock.

05:51:15 14 We're going to stop for the day at this point.

05:51:18 15 If you will, members of the jury, when you leave
05:51:21 16 the courtroom in a few minutes, please take your notebooks
05:51:24 17 with you and leave them on the table in the jury room.
05:51:29 18 You're welcome to take your face shields with you or leave
05:51:33 19 them there and have them there in the morning. It's
05:51:36 20 strictly up to you.

05:51:37 21 As you leave this evening, I want to remind you of
05:51:41 22 a few things. Unless you live alone, you're going to get
05:51:46 23 asked when you walk through the door, what happened today?
05:51:46 24 Remember my admonition to you. Blame it on me. But don't
05:51:51 25 even try to answer that question.

05:51:52 1 It is critical that you not communicate with
05:51:55 2 anyone in any way about what's happened in this trial and
05:51:59 3 that you follow all the other instructions I've given you.
05:52:02 4 I'm going to ask you to be back in the jury room assembled
05:52:06 5 and ready to go by 9 -- excuse me, by 8:30 in the morning.
05:52:10 6 We'll try to follow more of the schedule I talked about
05:52:13 7 tomorrow and through the remainder of the week. Please
05:52:17 8 travel safely to your homes.

05:52:19 9 And with that, the jury is excused for the
05:52:21 10 evening.

05:52:21 11 COURT SECURITY OFFICER: All rise.

05:52:25 12 (Jury out.)

05:53:03 13 THE COURT: Be seated, please.

05:53:05 14 Counsel, let me remind you of your meet-and-confer
05:53:07 15 obligations. Let me remind you of the discussion we had in
05:53:12 16 chambers this morning about a more accurate, fulsome, and
05:53:16 17 complete rendition of disputes that remain overnight by way
05:53:20 18 of both sides' positions being set forth in any notebook
05:53:25 19 that's delivered to chambers, and speaking with a single
05:53:29 20 joint voice to the Court rather than multiple,
05:53:33 21 individualized emails overnight at various wee hours of the
05:53:41 22 morning.

05:53:42 23 If there are disputes that have not been able to
05:53:44 24 be resolved, we will take them up, and I will be in
05:53:47 25 chambers not later than 7:30 in the morning. And we'll do

05:53:51 1 our best to start with the jury at 8:30 tomorrow.

05:53:53 2 Remember, before I bring the jury in tomorrow, I
05:53:57 3 will first ask outside of their presence for a
05:54:00 4 representative of each side to go to the podium and read
05:54:03 5 into the record those items from the list of pre-admitted
05:54:05 6 exhibits that have been used during today's portion of the
05:54:09 7 trial. And I'll follow that practice on a rolling basis
05:54:12 8 throughout the remainder of the trial.

05:54:14 9 Short of a few seconds, we have used one whole
05:54:19 10 hour of trial time this afternoon, which is allocated 35
05:54:24 11 minutes to Plaintiff and 25 minutes to Defendant, averaging
05:54:32 12 and rounding just a little bit.

05:54:35 13 Plaintiffs, tell me who you intend to call as your
05:54:39 14 first witness tomorrow.

05:54:41 15 MS. FAIR: Mr. Jalil Shaikh.

05:54:43 16 THE COURT: And what's your estimated time for
05:54:45 17 direct?

05:54:46 18 MS. FAIR: 45 minutes.

05:54:47 19 THE COURT: All right. Am I correct, counsel,
05:54:52 20 that the disputes over deposition designations that you
05:54:57 21 brought me this morning still remain, or have you had an
05:55:01 22 opportunity to work those out during the course of the day?

05:55:05 23 MR. MIRZAIE: I believe they still remain,
05:55:07 24 Your Honor.

05:55:07 25 THE COURT: All right. I'm not going to keep you

05:55:12 1 here this evening. We'll take those up first thing in the
05:55:15 2 morning. When do you anticipate putting on that deposition
05:55:18 3 witness.

05:55:19 4 MR. MIRZAIE: Right after Mr. Shaikh. So second
05:55:21 5 witness tomorrow morning.

05:55:21 6 THE COURT: Well, we'll resolve them before we
05:55:25 7 begin with the first witness. Hopefully, any adjustments
05:55:29 8 can be done during that intervening period of time.

05:55:32 9 MR. MIRZAIE: I'm sure they can.

05:55:33 10 THE COURT: Is there anything else that the
05:55:35 11 parties are aware of that the Court needs to know about
05:55:37 12 before we recess for the evening?

05:55:39 13 MR. FENSTER: Your Honor, we'd like some guidance
05:55:44 14 as to physical demonstratives and handing them to the
05:55:47 15 witness, COVID protocols, what -- what can we do? Is
05:55:53 16 there --

05:55:54 17 THE COURT: It's going to depend on what you're
05:55:56 18 talking about, Mr. Fenster.

05:55:58 19 MR. FENSTER: If we want to hand an actual device
05:56:00 20 or physical device to the jury to allow them to touch it,
05:56:05 21 to see it, not necessarily a phone, but a physical
05:56:09 22 demonstrative, are there any -- one, is that allowed given
05:56:13 23 COVID protocols? And, two, how can we make arrangements to
05:56:18 24 have some kind of sanitizer or something?

05:56:21 25 THE COURT: All right. With regard to a tangible

05:56:25 1 demonstrative, it is not my practice to allow that to be
05:56:28 2 handed to the jury and passed around. It's a jury aid.
05:56:33 3 It's a demonstrative for use with the witness. If you want
05:56:36 4 to use a demonstrative with the witness and you need to
05:56:39 5 approach the witness and deliver up the demonstrative,
05:56:42 6 that's fine, assuming it's your witness.

05:56:46 7 You need to make sure your witness knows about
05:56:48 8 your intention to use that. If the witness wants to have
05:56:51 9 on gloves or some other precaution, your witness can
05:56:55 10 provide for their own protection in that regard.

05:56:57 11 I assume we're talking about smartphones or
05:57:00 12 something of that size? You're not talking about an axle
05:57:05 13 off an 18-wheeler as a demonstrative.

05:57:08 14 MS. FAIR: I was specifically thinking of the
05:57:09 15 patent itself.

05:57:11 16 THE COURT: Well, the patent itself, I assume, is
05:57:13 17 an exhibit and not a demonstrative. But if you'd like to
05:57:18 18 approach and hand it up to a witness, I see no problem with
05:57:20 19 that.

05:57:22 20 Again, just make sure your witnesses know what you
05:57:24 21 intend to do in that regard. If there are going to be
05:57:29 22 similar demonstratives used on cross, then Defendants need
05:57:33 23 to disclose that so the witness is not surprised or put off
05:57:37 24 by hand -- by being handed something they don't know to
05:57:40 25 expect. You just need to be upfront with each other about

05:57:42 1 what's going to happen in that regard, all right?

05:57:45 2 Are there other questions from Plaintiff?

05:57:46 3 MR. FENSTER: No, Your Honor.

05:57:48 4 THE COURT: Anything from Defendants?

05:57:49 5 MR. LERNER: Your Honor, we may have some physical
05:57:51 6 exhibits, not demonstratives, but actual exhibits. Would
05:57:56 7 those be treated the same way as you mentioned for
05:57:59 8 demonstratives?

05:57:59 9 THE COURT: Treated the same way.

05:58:01 10 MR. LERNER: Thank you.

05:58:02 11 THE COURT: All right. Hearing nothing further, I
05:58:03 12 will see you in the morning, counsel. Have a good evening.
05:58:06 13 Be diligent and professional and unrelenting in your
05:58:10 14 meet-and-confer efforts this evening.

05:58:11 15 The Court stands in recess.

05:58:13 16 COURT SECURITY OFFICER: All rise.

05:58:16 17 (Recess.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes
SHELLY HOLMES, CSR, TCRR
FEDERAL OFFICIAL REPORTER

3/1/2021
Date